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A

COMMENTARY

ON THE

BENGAL TENANCY ACT

(ACT VIII. OF 1885:)

BY

M. FINUCANE, M.A., C.S.I., P.C., LL.D.,

Late Member of the Indian Civil Service, and now Estate Commissioner and Land Commissioner in Ireland,

AND

AMEER ALI (SYED), M.A., B.L., C.I.E., P.C.,

Member of the Judicial Committee of the Privy Council,

Barrister-at-Law, Judge of His Majesty's High Court of Judicature at Fort William in Bengal, author of "The Mahomedan Law," "Student's Hand-book of Mahomedan Law," "Short History of the Saracens," "Spirit of Islam," "Ethics of Islam," joint author of a "Commentary on the Indian Evidence Act," etc., etc.

SECOND EDITION

Incorporating all subsequent amendments up to and including Bengal Act I. of 1907; and Eastern Bengal and Assam Act I. of 1908.

EDITED BY

J. BYRNE, B.A., I.C.S.,

Late Assistant Settlement Officer, Bihar Settlement.

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EXTRACT FROM PREFACE TO THE FIRST EDITION.

FOR a proper apprehension of the principles and regulations to which the Bengal Tenancy Act gives expression, a knowledge of the antecedent legislation seems to us to be necessary. We have, therefore, in the Introduction, traced with some amplitude the revenue-system prevailing under former Governments and the history of land-legislation in this Province under British Rule.

In dealing with the Act, we have first indicated the governing principle involved in each section. We have then proceeded to give the result of the various rulings in which the provisions of the law have been discussed or given effect to. The cases under the older Acts have been cited, either for purposes of comparison or for illustration, where the principle laid down is the same as is applicable under the present Act. In order to avoid distracting the attention, we have given the references at the bottom of the page, our main object being to bring principles into prominence. It will be for the public to judge how far we have succeeded in carrying out our design.

* * * * * *

M. F.

A. A.

2nd April 1904.

PREFACE TO THE SECOND EDITION.

THE very considerable amendments made in the Bengal Tenancy Act by Bengal Act I. of 1907 have been incorporated in this edition. The further alterations made by Eastern Bengal and Assam Act I. of 1908 have also been incorporated. Marginal references indicate clearly the various provisions that apply only to the province of Bengal as now constituted and those that apply only to the province of Eastern Bengal and Assam. (The rules framed under the Act by both Governments are in the Appendix.)

The present Editor is solely responsible for the alterations made and new matter introduced in the present edition.

References to reported cases have been included up to the date of going to press.

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Kurseong,
1911.

J. B.

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ADDENDA AND CORRIGENDA.

Page 38.—*After* "Explanation," *add* "See *Hasan Ali* v. *Gobinda Lal* [1905], 9 C. W. N. 141, quoted on p. 73 and 139 (*Addenda*) on the question of the acquisition of occupancy-rights under Act X. of 1859 within municipal areas.

Page 45, sixth paragraph.—*Add* "See notes on s. 84, *post*, p. 371 as regards the subsequent modification of that Notification."

Page 61.—*Add* to foot-note—"See also *Jotindra Mohun* v. *Jarao Kumari* [1905], I. L. R., 33 Cal. 140 quoted under s. 195, *post*."

Page 64.—*Insert* after third paragraph—"Fishery-rents are not excluded by this definition (*Shib Prasad* v. *Vakai Pali* [1906], I. L. R., 33 Cal. 601). *See* also notes to s. 193, *post*."

Page 65.—*Add* to last paragraph—"It has been *held* that a *burga* settlement does not establish the relationship of landlord and tenant, but rather that of master and servant; and, hence, that suits for arrears of produce alleged to be due from a *burgadar* are triable by a Small Cause Court (*Kada Mandal* v. *Ahadali Molla* [1910], 14 C. W. N. 629). *See* also notes to s. 87, p. 387, *post*."

Page 67, fifth paragraph (numbered 3).—*For* '1880,' *substitute* '1890,' and *add* a foot-note—"see *Nafar Chander Manjhi* v. *Jyoti Kumar Mukherji* [1906], 11 C. W. N. 57 following *Monmohini* v. *Preonath* [1904], 8 C. W. N. 640. For the period of Limitation applicable, *see* Sch. III., p. 812, *post* (notes)."

Page 68.—*Insert* before (*7*) Tenure—"If a landlord receives money tendered as *rent* by a tenant, he cannot credit it to any interest that may be due. (*Bhagabati Debya* v. *Basanta Kumari Debi* [1906], 11 C. W. N. 110).

Page 69.—*Insert* before (*9*) Holding—"*See* also notes to s. 179, p. 736, *post*."

Page 73.—*Insert* before (*11*) Agricultaral year—"It was *held* that 'village,' as defined in s. 3 (*10*), is not confined to *non-urban* areas, and that this Act was applicable to *urban* areas outside the town of Calcutta (*Hasan Ali* v. *Gobinda Lal* [1905], 9 C. W. N. 141.) But the insertion of certain words in s. 1 (*3*), p. 38, *ante*, has had the effect of restricting the future operation of this Act to non-municipal areas. This restriction is not retrospective. *See* s. 19 (*2*) on p. 120, *post*."

Page 74.—*Add* to foot-note (3)—"*See* also notes to s. 191, *post*."

Page 79.—In the fourth line, *substitute* 'prepared' for 'proposed.

Page 86.—*Add* to foot-note (1)—"Referred to in *Nawab Ali* v. *Hemanta Kumari* [1904], 8 C. W. N. 117. *See* also *Midnapur Zamindari Co.* v. *Sham Lal Mitra* [1910], 14 C. W. N. clxxvi., in which it was pointed out that the words of s. 5 (*5*) afford no ground for holding that the possession of over 100 bighas is conclusive evidence that the tenancy is a tenure."

Add to foot-note (2)—"distinguished in *Ramdhari Sing* v. *Mackenzie* [1905], 10 C. W. N. 351 in which it was *held* that a *raiyat* does not lose his *raiyati* status, or divest himself of his right to acquire occupancy rights by taking a *zurpeshgi* lease (*i. e.*, usufructuary mortgage) of land of which he was previously in possession as a *raiyat*.

Page 92.—*After* paragraph "Purnea," *insert* "An enhancement that left to the tenure-holder 30 per cent. *net* profits, but trebled his previous rent, was *held* to be higher than was 'fair and equitable.'—*Ram Kumar Sing* v. *Watson & Co.* [1905], 9 C. W. N. 334.

Page 93.—*Add* to foot-note (1)—"*See* also 8 C. W. N. 1 between the same parties, and the notes to s. 105 (*4*), *post*."

Page 96.—*Add* as foot-note (1) to the fifth line—"(*3*) by custom and course of dealing.—See *Naba Kumari Debi* v. *Behari Lal Sen* [1907], I. L. R., 34 Cal. 902 (P. C.); also the notes to s. 179, p. 740, *post*.

Page 97.—*Before* section 11, *insert* "*see* notes to s. 179, *post*, for the latest ruling of the Privy Council about mineral rights."

Page 99.—*Before* section 12, *insert* "As regards the transfer of a *darpatni* piecemeal, *see* notes to s. 88, *post*, and *Kishari Raman Kapuria* v. *Ananta Ram Laha* [1905], 10 C. W. N. 270.

Page 102.—*Add* to foot-note 2—"This was distinguished in *Joy Gobind Laha* v. *Manmatha Nath Banerji* [1906], 33 Cal. 580, in which it was *held* that a mere '*benami*' transfer, even if made by registered instrument, cannot discharge the transferrer from liability to payment.

Page 103.—*Add* to foot-note 1—"Distinguished in *Joy Gobind* v. *Manmatha* (*see* addenda to foot-note (2), p. 102: followed in *Hemandra Nath* v. *Kumar Nath Roy* [1908], 12 C. W. N. 478).

Page 108.—*Before* section 16, *insert*—"Section 15 also applies to *shebaits* who possess and manage *debutter* property. Section 16, *post*, is a bar to rent-suits brought by such *shebaits* until the procedure of section 15 has been complied with.—*Mahatulla Nasya* v. *Nalini Sundari Gupta* [1905], 10 C. W. N. 42."

Page 109.—*Insert* before section 17—"When one co-sharer successor to a tenure, having complied with section 15, sued for arrears of rent making his co-sharers who had not so complied *pro-formâ* defendants, it was *held*[1] that he was entitled to a proportionate decree; and that, unless the defaulting co-sharers complied with section 15 before the decree was made, the claim in respect of their share should be dismissed."

Page 115.—*Add* to foot-note (2)—"*See* also *Baistab Charan Chowdry* v. *Akhil Chandra Chowdry* [1906], 11 C. W. N. 217, which laid down that a landlord, who had recognized the transferrer of portion of a permanent *raiyati* holding, was bound to sue transferrer and transferee jointly; and that he was bound to recognize the transfer, though, in the absence of his written consent, he was not bound to recognize the *sub-division* effected by the transfer. *See* further s. 88. *post* (notes)."

Page 120.—*Add* as foot-note—"Sub-s. (*2*) was added to save rights that had previously accrued within municipal areas. See *addenda* to p. 73, *ante*, and the case *Hasan Ali* v. *Gobinda Lal* [1905], 9 C. W. N. 141, therein quoted: also s. 1 (*3*) as amended (p. 38, *ante*).

Page 121.—*Add* to second paragraph—"as regards its *transferability*, see notes to ss. 26 and 183, *post*.

---

[1] *Tarini Charan* v. *Chandra Kumar* [1910], 14 C. W. N. 788.

Page 126.—*Add* to foot-note (1)—"(followed in *Latifur Rahman* v. *Forbes* [1909], 14 C. W. N. 372). *See* further, *addenda* on p. 153, *post*."

Page 128.—*In* last line of text *for* III., substitute "Illustration." *Add* to foot-note (1)—"*See* also notes to s. 181, *post*."

Page 129.—*Add* to foot-note (9)—"(distinguished in *Ramdhari Sing* v. *Mackenzie* [1905], 10 C. W. N. 851). See *addenda* to foot-note (2 p. 86, *ante*).

Page 136.—*Add* to foot-note 1—"It has been *held* that the transferee of the share of one of several joint owners of a non-transferable occupancy-holding cannot claim joint possession of the holding as against the co-sharers of the deceased transferrer. This does not quite accord with the view taken in the case first cited (8 C. W. N. 315), that a surrender by one co-sharer does not enlarge the rights of the remaining co-sharers; nor with that in *Hari Dass* v. *Udoy Charan Dass* [1908], 12 C. W. N. 1084, that such transfers are not void, but only *voidable* at the will of the landlord. *See* the notes to section 183, *post*, for a fuller discussion.

Page 137.—*Insert* before section 21—"As regards the applicability of the presumption of sub-section (7) to *raiyats* in the course of rent-suits, *see* the recent cases discussed under section 188, p. 786, *post*: *Mulluk Chand* v. *Satis Chandra* [1910], 14 C. W. N. 335 and *Jahander Bax* v. *Ram Lal* [1910], 14 C. W. N. 470. *See* also Calcutta Weekly Notes, Vol. XIV,. p. cxxvi.

As regards the protection of occupancy-rights by the proviso to section 37 of Act XI. of 1859 in the event of revenue-sale, *see* the case *Sarat Chandra* v. *Asman Bibi* [1904], I. L. R., 31 Cal. 725, quoted under section 195, *post*.

"It has been *held* that the application of this sub-section (7) to a *raiyat* can only arise when his other occupancy-holdings in the village are held under the same landlord (*Kuldip Sing* v. *Chattur Sing* [1898], 2 C W. N. cccii): but this has been dissented from in a later case (*Kripa Nath* v. *Shekh Anu* [1906], 10 C W. N. 944), for which, *see* notes to section 182, *post*.

Page 139.—*Add* to foot-note (3)—"Even a non-occupancy *raiyat* is entitled to accretions to his tenancy: *Madhu* v. *Sabar Ali* [1910], 14 C. W. N. 681. *See* notes to section 41, *post*."

Add to foot-note (4)—"See *contra*, *Hasan Ali* v. *Gobinda Lal* [1905], 9 C. W. N. 141, quoted in the *addenda* to p. 73, *ante*, in which it was *held* that, 'even if the Bengal Tenancy Act does not apply to *urban* areas (a plot of land within the Dacca Municipality), still the tenancy had existed for at least fifty years, and the tenant had a right of occupancy in it before the Bengal Tenancy Act was passed, under Acts X. of 1859 and VIII. of 1868. The new sub-sections of section 19, page 120, *ante*, save such ancient rights, from the operation of the new restriction in section 1 (*3*), page 38, *ante*.

Page 141.—*Insert* before section 22—"A *raiyat* does not lose his *raiyati* status or divest himself of his right to acquire occupancy-rights by taking a *zurpeshgi* lease (*i. e.*, usufructuary mortgage) of land of which he was then or previously put in possession as a *raiyat*. By 12 years continued possession on a cultivating lease, the tenant can acquire a right of occupancy.—*Ramdhari Sing* v. *Mackenzie* [1905], 10 C. W. N. 351 (distinguishing *Bengal Indigo Co.* v. *Roghubir Dass* [1896], I. L. R., 24 Cal. 272 and *Ram Khelawan* v. *Sambhu* [1898], 2 C. W. N. 758).

Page 144.—*Add* to foot-note 5—*See* also *Ram Lal Sukul* v. *Bela Gazi* [1910], 14 C. W. N. 814, quoted under section 159, *post*.

Page 147.—*In* last lime of third. paragraph, *for* 'rulings,' *read* '*ruling*.' *Add* to foot-note (1) "followed in *Ram Mohan Pal* v. *Shekh Kacchu* [1905]. 9 C. W. N. 249.

Page 148.—*Add* to foot-note (2)—"followed in *Ram Mohan Pal Shekh Kacchu* [1905], 9 C. W. N. 249.

Page 151.—*Insert* before section 23—"When a temporary lessee of lands in the occupation of occupancy-*raiyats* obtained *khas* possession of the lands with the consent of the *raiyats* for the purpose of indigo cultivation, he did not acquire an occupancy-right in these lands, being merely a landlord in possession, and the lessor is entitled to *khas* possession on the expiry of the lease.—*Ram Lochi Koeri* v. *Collinridge* [1907], 11 C. W. N. 397.

Page 153.—*Continue* first paragraph—"It has lately been *held* that, by using for cultivation lands intended for grazing, the tenants (who had acquired permanent

rights in their tenancies by custom and the course of dealing therewith) did not incur forfeiture, and were not liable to ejectment on notice. It was *held* that a right of occupancy had been acquired in these lands even before the Bengal Tenancy Act was passed, under section 6 of Act X. of 1859.—*Latifur Rahmann* v. *Forbes* [1909], 14 C. W. N. 372 (following *Fitzpatrick* v. *Wallace* [1869], 11 W. R. 231.) —*See* foot-note (1), page 126, *ante.*

Page 154.—*Add* to last paragraph—"On appeal to the Privy Council, this view was not accepted in its entirety. *See* notes to sections 76 and 155, *post*, and the case *Hari Mohan Misser* v. *Surendra Narain Sing* [1907], I. L. R., 34 Cal. 718 (P. C.), therein quoted.

Page 157.—*Add* to foot-note (1)—"*See* also notes to section 183, *post*, and the case *Prodyat Kumar Tagore* v. *Rakhal Chandra Sarkar* [1910], 14 C. W. N. 487, in which it was laid down that acquiescence by a landlord in the appropriation of trees by his tenants leads to the growth of valid usage which binds the landlord, and his successors by purchase, just as if that right had been expressly granted to the tenants. *See* also *Mofiz Sheik* v. *Rasik Lal* [1910], 14 C. W. N. 951, for rights in trees on non-agricultural holdings.

Page 164.—In last line of second paragraph, *add* to the words "This is no longer the law," the following—probably; and "*see* further the case *Rajani Kanta* v. *Ekkowri Das* [1907], I. L. R., 34 Cal. 689 (distinguishing *Madar Mandal* v. *Mohim Chandra Mozumdar* [1906], I. L. R., 33 Cal. 531, under section 47, *post*), also the notes to new section 184A, *post.*"

Page 166.—*Add* to third paragraph—"This however has since been held to be equivalent to 'abandonment.' *See* section 87, *post.*—*Sailabala Debi* v. *Sriram Bhattacharji* [1907], 11 C. W. N. 873."

Page 171.—*Add* to foot-note 7—"*See* further the case quoted in foot-note (2) on page 344, *post*, under section 73—*Deb Narain Dutt* v. *Baidya Nath* [1910], 14 C. W. N. 68 (distinguishing *Nabakumari Debi* v. *Behari Lal Sen* [1907], I. L. R., 34 Cal. 903, P. C.).

Page 173.—*Add* to foot-note (1)—"Followed in *Piari Mohan* v. *Jote Kumar* [1906], 11 C. W. N. 83, in which

it was said that the person who purchases a non-transferable occupancy-holding in execution of a money-decree purchases nothing. Such holdings are not transferable as between the judgment-debtor and the decree-holder. But in *Hari Das Baner,ee* v. *Udoy Charan Dass* [1908], 12 C. W. N. 1086, it was *held* that such transfers are voidable at the landlord's option only, and are not *void*. As regards joint possession by a purchaser of part of a non-transferable holding, *see* also *Agarjan Bibi* v. *Panaulla* [1910], 37 Cal. 687 (14 C. W. N. 779), under section 183, *post*.

Page 174.—*Add* to foot-note (1)—See *Kishori Mohan* v. *Sheikh Ujir* [1910], I. L. R., 37 Cal. 610: 14 C. W. N. clxviii., in which it was *held* that this section applies to the case of a cash-rent being illegally enhanced by adding on produce-rent to it. Section 28 of this Act precludes such an enhancement.

Page 177.—Foot-note (3)—*For* 33, *read* 333.

Page 180.—*Add* to foot-note (5)—See *Kishori Mohan* v. *Sheikh Ujir* [1910], I. L. R., 37 Cal. 610: 14 C. W. N. clxviii., in which it was *held* that this section applies to the case of a cash-rent being illegally enhanced by adding on produce-rent to it. Section 28 of this Act precludes such an enhancement.

Page 187.—Foot-note (3)—*For* 1874, *read* 1894.

Page 191.—*Add* to fourth paragraph—"Enhancement of rent under this section and *increase* of rent under section 52 may be sued for simultaneously—*Saroda Charan Chatterjee* v. *Iswar Samli* [1907], 11 C. W. N. 1154.

Page 195.—*Add* to fourth paragraph—"A Civil Court, in directing investigation under clause (*b*) of this section, must indicate to the investigating officer what it is that the Court precisely requires. Rents illegally enhanced contrary to section 29 should be excluded from consideration.—*Nobin Chandra Saha* v. *Kula Chandra Dhar* [1910], 14 C. W. N. 914.

Page 212.—*Insert* after fourth paragraph—"When a tenant was never put in possession of part of the holding let out to him, and pleaded non-liability for the rent of that portion when sued for rent, it was *held* that he was entitled to raise that plea, and that a suit

for abatement under section 38 or section 52 was not necessary.—*Shiba Kumari Debi* v. *Biprodas Pal Chowdhry* [1908], 12 C. W. N. 767. *See* also *S. N. Guha* v. *Kalikanta* [1910], 14 C. W. N. cclxxxiv.

Page 216.—*Insert* before section 40—"Under sub-section (*6*), the Court is *bound* to refer to the lists prepared under this section. Failure to do so is an error of law which entitled the plaintiff to seek relief in the High Court.—*Nobin Chandra Saha* v. *Kula Chandra Dhar* [1910], 14 C. W. N. 914.

Page 223.—*Add* to foot-note (1)—"*See* also foot-note (2) on page 239, *post*.

Page 224—*Add* to last paragraph—"A non-occupancy *raiyat* is entitled to the possession of accretions to his holding (*Madhu* v. *Sabar Ali* [1910], 14 C. W. N. 691); and can annul imcumbrances under section 159, *post* (*q. v*).[1]

Page 228.—*Add* to foot-note (3)—"*See* also notes to section 186A, *post*."

Page 229.—*Add* to first paragraph—"Such a denial would not relieve the landlord of the obligation to give adequate notice, even to a mere middleman, before instituting a suit for ejectment."—*Pratap Narain Das* v. *Harihar Sing* [1909], I. L. R., 36 Cal. 927 (following the principle of *Kishori Mohun Roy Chowdhry* v. *Nand Kumar Ghosal* [1897], I. L. R., 24 Cal. 720, which laid down that a tenant holding under a *kabuliyat* is entitled to six months' notice terminating with the end of a year of the tenancy.

Page 234.—*Insert* before section 45—"This includes non-occupancy *raiyats*. Section 4 (*c*), page 80, *ante:* also *Tamizudin Khan* v. *Asrab Ali* [1904], I. L. R., 31 Cal. 647, under Schedule III. (*3*), *post*, p. 817.

Page 239.—*Insert* after third paragraph—"*See* section 160 (*e*), *post*, regarding the protection given to a non-occupancy-*raiyat* in the event of an execution-sale."

Page 243.—*Insert* before the last paragraph—"Written lease in clause (*b*) means a lease as described in clause (*a*) defining the terms of the tenancy.—*Kamarudin* v. *Srinath Chowdhry* [1904], 8 C. W. N. 136. It

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[1] *Ram Lal Sukul* v. *Bela Gasi* [1910], 14 C. W. N. 814.

means a lease for a fixed term of years (*Idugazi* v. *Chandra Kali* [1904], 8 C. W. N. 139.

This section does not contemplate a written lease without any term of years.—*Mohendra Nath* v. *Parbati Charan Dass* [1904], 8 C. W. N. 136.

Page 244.—*Add* to second paragraph—"*See* section 182, *post*."
In foot-note (2) *for*, '1903' *read* '1904.'

Add to third paragraph—"*See* also notes to section 186A, *post*.

Page 245.—*Insert* before last paragraph—"A delay for 19 months in instituting a suit for ejectment on the expiry of a written lease does not justify a dismissal of the suit on the ground that the lessee was allowed to 'hold over' (*ses* section 51, page 264, *post*) in the absence of proof of receipt of rent for a period subsequent to the expiry of the lease.—*Ratan Lal Gir* v. *Farshi Bibi* [1907], I. L. R., 34 Cal. 396.

Page 248.—*Add* to foot-note 3—"further considered and explained in *Jamini Sundari Dasi* v. *Rajendra Nath Chakravarti* [1906], 11 C. W. N. 519.

Page 257.—*Add* to foot-note 1—"in which it was said that the principle of this section is a useful guide in such cases under the Land Acquisition Act.

Page 260.—*Add* to foot-note 2—"*See* also *Gulab Misir* v. *Kumar Kalanand Sing* [1910], 14 C. W. N. 884. In that case the tenants proved that they had held at the same rents for 27, 60, and 57 years respectively. It was *held* that, apart from the presumption of this section, the tenants had succeeded in proving that their status was that of occupancy-*raiyats* holding at rents fixed in perpetuity."

Page 261.—*Insert* before last paragraph—"whether the division of a tenancy creates or does not create a new tenancy depends on the intention of the parties, and is to be decided on the evidence. No inflexible rule of law can be laid down—*Mulluk Chand Dass* v. *Satish Chandra Dass* [1910], 14 C. W. N. 336. *See* also section 88, *post*.

Page 263.—*Add* to second paragraph—"*See* also the notes to section 179, *post*, on this subject."

Page 264.—*Add* to foot-note (2)—"And leased for building purposes."

Insert before section 51.—"This section has no application to a case wherein a landlord brings a suit for ejectment on the ground that a non-transferable holding has been sold to a third person, and has been abandoned by the tenant.—*Sarat Chandra Ghose* v. *Shyam Chand Sing* [1906], 10 C. W. N. 930.

Page 265.—*Add* to foot-note (4)—"and the case, *Ratan Lal Gir* v. *Farshi Bibi* in the *addenda* to page 245, *ante*.

Insert before section 52—"The holding-over by one or more co-tenants without the consent of the others cannot render persons *not* so holding over liable for rent. This applies especially where it is sought to make the estate of a deceased co-tenant liable for rent due for holding over. A new contract must be clearly proved.—*Brojo Lal Roy* v. *Belchambers* [1905], 9 C. W. N. 340.

Page 268.—*Add* to third paragraph—"But it has been *held* that the holder of a permanent *mokarari* lease is not entitled to an abatement for diluvion.—*Nanda Lal Mukherji* v. *Kymudin Sardar* [1905], 9 C. W. N. 886.

Page 269.—*Add* to third paragraph—"Enhancement may be sued for under section 30, and additional rent under section 62, simultaneously in one suit.—*Saroda Charan Chatterji* v. *Iswar Samli* [1907], 11 C. W. N. 1154.

Page 278.—*Add* to first paragraph—"When a tenant has not been put into possession of the whole of the lands let to him, he can plead non-liability for rent of that portion in a suit for rent, without first suing for abatement under section 38 or 52.—*Shiba Kumari Debi* v. *Biprodas Pal Chowdhry* [1908], 12 C. W. N. 767.

Page 282.—*Add* to parapraph *fifth*—'Even if the *kabuliyat* specifies a fixed sum as payable in lieu of the produce, it was apparently considered that the mention of a fixed sum in the *kabuliyat* was made only for the purpose of estimating the stamp-duly for registration-purposes.—*Shekh Ysop* v, *Gopal Chandra Chakravarti* [1910], 14 C. W. N. cxxcii.; *Baneshwar Mukherji* v. *Umesh Chandra Chakravarti* ,[1910] 14 C. W. N. clxxxiv. But see *contra Bipra Charan* v. *Suchand Roy* [1910], 14 C. W. N. ccxxxii.

Page 285.—*Add* to second paragraph—"and not to interest. —*Bhagabati Debia* v. *Basanta Kumari* [1906] 11 C. W. N. 110."; and *continue*—"Payment by a tenant to Government of a certain sum annually on his landlord's behalf does not amount to an appropriation of the amount paid to the rent of each year within the meaning of section 55.—*Mohim Chandra Roy* v. *Kalitara Debia* [1906], 11 C. W. N. 939.

Page 296.—*Add* to third paragraph—"A tenant cannot plead in defence to a rent-suit that the plaintiff, though, registered, is merely a *benamidar*.—*Sadhu Charan Pal* v. *Radhika Mohan Roy* [1904], 8 C. W. N. 695.

Page 297.—*Add* to second paragraph—"But he can show that the title on which registration has been obtained has been declared void, and this is a good defence.—*Girish Chandra* v. *Satis Chandra Sarkar* [1908], 12 C. W. N. 622.

Page 301.—*Insert* before section 61—"A tenant of homestead land may make a deposit under this section. *Pratap Chandra* v. *Biseshwar Paramanik* [1905], 9 C. W. N. 416. *See* also section 182 (notes), *post*.

Page 308.—*Add* to foot-note 3—"After a tenure has been sold in execution of a decree for arrears of rent, the decree-holder cannot again put up a portion of the tenure to sale in execution of a decree for arrears of rent that had previously accrued, on the ground that such rent constituted a first charge on the tenure. When, therefore, it did not appear that the tenure was sold at the first sale subject to a charge for previous arrears, it was *held*[1] that the subsequent sale passed no title, and that sale was liable to be set aside on the ground that the judgment-debtor had no saleable interest. The second sale took place when the first sale had been set aside; but, on appeal, it was ultimately confirmed: it was *held*[1] that the right of the purchaser at the second sale to apply for its cancellation accrued only on the date of confirmation of the first sale under article 181 of Schedule I., Limitation Act.[1]

Page 311.—*Add* to foot-note (2)—"(overruling the case *inter partes* reported at 9 C. W. N. 34 [1905]).

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[1] *Gopal Saran* v *Mahomed Ahsan* [1910], 14 C. W. N. 1096.

Page 313.—*Add* to paragraph 3—" *See* section 148A, *post.*

Page 314.—In foot-note (2), *after* " *Chuckerbutty,*" *read*" [1910]" *for* " [1907]."

In foot-note (3), line 8, *for* " *Lal,*" read " *Pal.*"

Add to foot-note (4)—" (not followed in *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal. 737. But *see* also *Gopal Saran* v. *Mahomed Ahsan* [1910], 14 C. W. N. 1096.

Page 316.—*Add* to foot-note—" *See* also, under section 165, *post*, *Surbo Lal* v. *Wilson* [1905], I. L. R., 32 Cal. 680; also, under section 193, *post*, *Shib Prasad* v. *Vakai Pali* [1906], I. L. R., 33 Cal. 601.

Page 317.—*Insert* before sixth paragraph—A mere *benamidar* cannot create a charge on a tenure within the meaning of section 65 by executing a mortgage-bond in favour of the landlord, who knew him to be only a *benamidar*, and acting without the knowledge of the real tenure-holder.—*Royzudin Sheikh* v. *Kali Nath Mukherji* [1905], I. L. R., 35 Cal. 985.

Page 324.—*Insert* after last paragraph—" Money paid as *rent* cannot be credited to *interest.*—*Bhagabati Debia* v. *Basanta Kumari* [1906], 11 C. W. N. 110.

Page 328.—In foot-note (2), *for* 1900, *read* 1903.

Add to foot-note (3)—" *See* also *Tilak Chand Roy* v. *Jasoda Kumar Roy* [1906], 11 C. W. N. 215. A *kabuliyat* executed before 1885 stipulated for interest at a higher rate than 12 per cent It was *held* that a purchaser at a private sale was bound by that stipulation.

Page 329.—*Add* to foot-note (3)—" *See* also *Padmanand Sing* v. *Radha Sing* [1905], 9 C. W. N. 469. In a former suit, it had been decided that a stipulation in the *kabuliyat* for the payment of certain cesses was unenforceable by law: It was *held* that this decision operated as *res judicata* in the subsequent suit.

Page 332.—*Add* to first paragraph—" The limit of twenty-five per cent. applies also to suits for rent in kind."—*Apurba Krishna Roy* v. *Asutosh Datta* [1905], 9 C. W. N. 122.

Page 343.—*Insert* before last paragraph—"It has been *held* that a purchaser cannot deposit rent in Court when the recorded tenant is being sued for rent. Sections 170, 171, apply only to execution-proceedings, and not to such a case. The person making the deposit had no '*locus standi*,' and the plaintiff (landlord) could not be compelled to accept payment of rent from a person who was not established to be his tenant, and who was not a party to the suit.—*Sarojendra Krishna Deb* v. *Charan Ghose* [1910], 14 C. W. N. clxxxiii.

Page 344.—*Add* to first paragraph—"This, however, has since been *held* to be equivalent to *abandonment*: (*see* section 87, *post*).—*Sailabala Debi* v. *Sriram Bhattacharji* [1907], 11 C. W. N. 873."; and *continue*—"When part only of a holding has been transferred, the recorded *raiyat* continues liable for the entire rent. The purchaser is bound by the decree, and so is a '*representative*' of the registered tenant within the meaning of section 244 of the Civil Procedure Code (1882); and so he can apply under section 173 of this Act on the ground that the holding has been purchased by the judgment-debtor in the name of the auction-purchaser, or, under section 311 of the Civil Procedure Code, as a 'person whose immovable property has been sold.'—*Asgar Ali* v. *Asabudin Khan* [1905], 9 C. W. N. 134 (following *Ishan Chandra Sarkar* v. *Beni Madhab Sarkar* [1896], I. L. R., 24 Cal. 62).

Page 351.—In foot-note (4), *insert* at end of the first paragraph—"Distinguished in *Radha Charan Roy* v. *Golap Chandra* [1904], 8 C. W. N. 529 [*see* foot-note (2), page 355, *post*].

Page 355.—*Add* to foot-note (2)—"[distinguishing the cases quoted in foot-note (4), page 351, *ante*]."

Page 356.—*Add* to second paragraph—"especially the case, *Apurna Charan Ghose* v. *Karam Ali* [1906], 10 C. W. N. 527. But, when the lease did not fall within the meaning of *mokarari* in section 179, it was *held* that a stipulation for the payment of Rs. 3 in lieu of two goats was a stipulation for an *abwab*, and was therefore unenforceable.—*Gayratulla Sardar* v. *Grish Chandra Bhaumik* [1907], 12 C. W. N. 175.

Page 362.—In foot-note 1, *after* 'cases,' in first line, *insert* "*Surendra Narain Sing* v. *Hari Mohan Misir* and," and, in the 7th line, *read* "District."

Page 372.—*Add* to foot-note (1)—"(followed in *Narain Mahton* v. *Brojo Behari* [1905], 9 C. W. N. 472.

Page 383.—*Add* to foot-note (3)—"It has since been laid down that an '*utbandi*' tenant need not give any notice. *See* section 180, p. 750, *post*.—*Amrita Lal* v. *Giridhar Ghose* [1907], 11 C. W. N 581.

Page 389.—Foot-note (6) for '*Thirthanund*' read '*Tirthanund*.'

Page 390.—Foot-note (1)—*Add* 'Followed in *Sailabala Debi* v. *Sriram Bhattacharji* (1907) 11 C. W. N. 873. See p. 166 *add., ante*:'

Page 391.—Line 2: for '*proper*' read '*paper*.'
Fourth para.: line 3: for '*allows*' read '*attorns*.'

Page 393.—Lines 1 and 6 for 'p. 386' *read* 'p. 387.'
Foot-note (2) line 7 for '*on*' read '*as*.'

Page 394.—Para. 4, line 1 and para. 5, line 1, *read* 'p. 387.'

Page 395.—Para. 3, line 1, *read* 'p. 388.'

Page 400.—*Add* to foot-note 1—"*see* also *Agurjan Bibi* v. *Panaulla* (1910) 14 C. W. N. 779, quoted on p. 136 *add: ante*."

Page 401.—Foot-note 5, in line 3 *read* 'Rash Behari Mandal.'

Page 403.—*Add* to first para.: '*See* also section 82, p. 367, *ante*, for compensation on ejectment.'

Page 406.—*Insert* before section 90.—"See *Pratap Narain Deo* v. *Harihar Sing* (1909) I. L. R., 36 Cal. 927, for ruling as to necessity of giving reasonable notice before instituting a suit for ejectment."

Page 416.—Para. 3, *read* "where" in first line.

Page 420.—Para. 4, line 7, *read* 'false.'
Do. 8, *read* 'under.'

Page 428.—Foot-note 2: read '*Norendra*.'

Page 433.—Foot-note: line 3: read '*Ledlie*.'

Page 451.—First marginal note: *read* '1898' *for* '1818.'

Page 453.—Para. 2: last line: *read* 'on' *for* 'in.'

Page 455.—*Add* to para. (2) '*see* section 105 (7) *post*.'

Add to foot-note (1). 'Dissented from in *Pandab Dowari Dasi* v. *Ananda Kishun* (1910) 14 C. W. N. 897. *See* page 505 *post:* Foot-note (1)."

Page 493.—Foot-note (3) : read ' v. *Gohar Ali Khan.*'

Page 498.—Foot-note (3) : read " *Hateem.*"

Page 502.—Foot-note (1) : read " *Shambu.*

Page 507.—Foot-note (2) : read " *Shambu.*"

Page 511.—Para. 5, last line ; *read* " Report."

Foot-note (1) *read* " J. H. Kerr."

Page 517.—Foot-note line (3) : *read* " 11 C. W. N."

Page 527.—Foot-note (1) : read ' *Kajimudi.*'

Page 541.—Para. 5, line 2, *read* ' Registration.'

Page 595.– Footnote 2, line 2, read ' *Moti.*'

Page 638.—Foot-note 1, read ' *Haranando.*'

Page 649.—Foot-note 2.—*Add* " (P. C.)."

Page 667.—First marginal note : *read* " Bengal."

Third do. " Certificate."

Page 677.—Foot-note 5 : read ' *Joad.*'

Page 678.—Para. 2 : last line : read—' in *a* recent case.'

Foot-note 2 : *add* " (P. C.)."

Page 683.—Foot-note 8 : read ' *Bhela.*'

Page 685.—Foot-note 4 : read ' v. *Baroda.*'

Page 688.—Foot-note 2 : read ' *Akhoi.*'

Page 734.—Foot-note 3 : read ' v. *Manmatha Nath Dutt.*'

Page 779.—First marginal note : *read* " Penalties for illegal, etc."

Page 787.—Second marginal note : *read*.....' of an abandoned, etc.

Page 815.—Second marginal note : *read*....." of" rents.

TABLE OF CASES CITED.

[NOTE—"*Ad.*" means the *Addenda* printed on page xvii, *ante.*]

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Darbhanga	By J. H. Kerr, Esq., I.C.S. 1904.
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List of publications referred to in this Work—(concld.)

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Orissa Settlement Report ...	Final Report of the Survey and Settlement of the Province of Orissa (temporarily-settled areas), 1890 to 1900, A. D. By S. L. Maddox, I.C.S., Settlement Officer. 2 *Vols. Calcutta*, 1900.
Palamau Settlement Report ...	Final Report on the Survey and Settlement of the Palamau Government Estate, 1894-95 to 97. By D. Sunder, Esq., Settlement Officer. *Calcutta*, 1898.
Rent Commission's Report ...	The Report of the Rent Law Commission, dated the 19th June, 1880, with Annexures and Appendices. Published on pages 7 to 504 of the special issue of the *Calcutta Gazette*, dated the 21st July, 1880.
Selections	Selections from papers relating to the Bengal Tenancy Act, 1885. *Calcutta*, 1885.
Sir Alexander Mackenzie's Note ...	Note on the Rights and Status of the Cultivating classes. By Mr. (afterwards Sir Alexander) Mackenzie, dated the 6th January, 1880. Published on pages 407 to 409 of the *Calcutta Gazette*, dated the 21st July, 1880.
Sir Antony MacDonnell's Minute ...	Minute II, on the Cadastral Survey and Record of Rights in Bihar, dated 20th September, 1893. Published in the Supplement to the *Calcutta Gazette* of 25th October, 1893.
Survey and Settlement Manual ...	The Survey and Settlement Manuals. Published under the authority of the Board of Revenue, L. P. *Calcutta*, 1908.
Thuillier's Surveying	Manual of Surveying for India. By Col. Thuillier, C.S.I., and Lieut.-Col. Smyth. First Edition. *Calcutta*, 1851.
Tippera Settlement Report ...	Survey and Settlement of Chakla Roshnabad Estate in the Districts of Tippera and Noakhali, 1892-99. By J. G. Cumming, Esq., I.C.S. *Calcutta*, 1899.
[1]Woodfall's Landlord and Tenant ...	Woodfall's Law of Lannlord and Tenant, with a full collect·on of precedents and forms of procedure, containing also a collection of leading propositions.

[1] Where not otherwise stated, the edition referred to in this work is the 16th.

INTRODUCTION.

Discussions connected with the passing of the Bengal Tenancy Act.

No Act passed by the Indian Legislature was ever submitted to such prolonged, careful, and searching investigation as the Bengal Tenancy Act, VIII. of 1885. The discussions connected with it were carried on continuously from the dates of the appointment by Sir Ashley Eden of the Bihar and Bengal Rent Commissions, in 1878 and 1879, respectively, throughout the periods of office of two Viceroys (Lord Ripon and Lord Dufferin) and two Lieutenant-Governors (Sir Ashley Eden and Sir Rivers Thompson) down to 1885, when the Act at last found its place on the Statute Book. During the course of these discussions, the origin and history of the *zamindari* tenure in Bengal, Bihar, and Orissa, and the rights and obligations of the landlords and tenants in these Provinces, were investigated from every point of view.

Different views held on the Bills which eventuated in the Bengal Tenancy Act.

2. At the time when the Bengal Tenancy Bill was under consideration, there were some who held that the land in the permanently-settled parts of Bengal was the absolute property of the *zamindars*, who ought to be entitled to do as they pleased with it. According to them the Bill was one of a revolutionary and confiscatory character. There were others who contended that, by the common law and immemorial custom of Bengal, the *raiyats* were, before the Permanent Settlement, entitled to hold their lands at customary or *pargana* rates, and that the Permanent Settlement was not meant to deprive the *raiyats* of that right, but, on the contrary, that Lord Cornwallis' intention was

to secure them in possession of their lands at rates of rent which were to be as fixed and unalterable as the revenue payable to the British Government by the *zamindars* themselves. According to the latter authorities, the Bill was an attempt, of a truly conservative character, to restore to the *raiyats* some of those ancient rights of which they had been deprived subsequently to the date of the Permanent Settlement. The Act itself was a compromise between these conflicting views.

History of law of landlord and tenant in Bengal — a summary.

3. Life is short, official life in India is very short, and the memory of official acts and of the reasons for them is still shorter. The generation that took part in the discussions connected with the Bengal Tenancy Act is passing away, and the discussions themselves are becoming unknown or forgotten. As some knowledge of the origin and history of the system of land tenure prevailing in Bengal is necessary for the comprehension of the principles underlying the Act, it may be useful to give, so far as the limits of an Introduction will permit, a summary of the history of the law of landlord and tenant in Bengal, and to state the different views that have been held as to the origin and effect of the more important laws that have been passed on the subject. We do not in this summary propose to offer any opinions of our own on disputed questions; but, having referred our readers to the various authorities, leave it to them to form their own opinions on controverted points.

Land tenure in Hindu times.

4. According to the Code of *Manu*, drawn up probably in the 9th century before Christ, the Government was vested in an absolute monarch acting under the counsel of Brahmins.[1] The chief item of the monarch's revenue consisted of a share of all agricultural produce, varying according to the soil.[2]

The Code of *Manu* does not distinctly lay down to whom the property in the soil belonged. It has been argued, on the

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[1] Field's Landholding, p. 418, and authorities there cited.

[2] *Manu*, Chap VII., verse 130: "Of grain an eighth part, a sixth part, or a twelfth, according to the difference of the soil and the labour necessary to cultivate it, may be taken by the king."

one hand, that it belonged to the king, as he is called "lord paramount of the soil."[1] The view that the proprietary right vested in the cultivator has, on the other hand, been deduced from the text "land is the property of him who cut away the wood" or "who tilled and cleared it." As the king's share was limited to one-sixth, or at most one-fourth, it has been said that there must have been another proprietor for the remaining five-sixths or three-fourths, who had the greater interest of the two in the whole property shared. It is now generally held that ownership, or such ownership as was within the conception of the time, was with the community, which existed before kings or sovereigns.[2]

The village community.

The village community was a little republic, having its own territory and its own municipal government under a Headman, whose office in time became hereditary, according to the tendency of Hindu institutions. The territory was the common property of the original inhabitants—the members of the original Patriarchal Family. A compact portion of the land was not given to each individual, but a share of each description of soil suitable for the production of each different crop was assigned to every member of the community. All the members of the community were liable for the dues of the Government and other public burdens in proportion to their respective shares.[3]

As the Patriarchal Family became developed, as the shares of original members became divided and subdivided by the operation of the law of inheritance, which did not recognize primogeniture; and, as the transfer of shares was first allowed and then became usual, the idea was created of individual ownership at variance with common ownership.[4] Strangers were introduced, *first*, by the sale or mortgage of their rights

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[1] *Manu*, Chap. VII., verse 7.—The Sanskrit word used is ভূমিপঃ (*bhumipah*).

[2] Field's Landholding, p. 419; Maine's Village Communities, p. 122.

[3] Field's Landholding, p. 420.

[4] Field's Landholding, p. 422; Carnegy's Land Tenures, pp. 5 and 6.

by members of the village community, though this, in the early history of village townships, was not frequent; *secondly*, by members of the village community who had more land than they could cultivate assigning part of it to outsiders, who undertook to pay the Government share of the produce, with an additional share to the community; and as no one would settle in the village, break up land, and take a share in its burdens except on a fixed tenure, permanent tenures were thus created; and, *thirdly*, by females, or persons whose caste prevented them from cultivating their lands personally, making them over to others who would undertake to cultivate them and pay the Government share of the produce, and give a share in addition to those on whose behalf they cultivated, thus creating temporary tenures.[1]

Khudkasht raiyats, origin of, according to Mr. Field.

5. In the course of ages and the changes that have taken place in the political condition of the country, the old Hindu names have mostly disappeared, but in later times outsiders who thus settled in the village were known as *chapparband*, *thani* (from *sthaniya*, place), *basinda*, *kaimi*, *kadimi*, and *maurasi assamis*, and under the Moguls as *khudkasht raiyats*, that is *raiyats* who cultivated the land of their own village or the village in which they resided, the word being derived from *khud*, own, and *kasht*, cultivation.

Outsiders who cultivated lands in the village, but did not settle in it, were called *pahikasht* raiyats, from *pahi*, near, or, according to others, from '*pay*,' the foot, and *kasht*, cultivation. These *raiyats*, in early times, as a rule, paid lower rates than the *khudkasht raiyats*, inasmuch as, not having any habitation in the village, and competition being for tenants rather than for land, they could at any time abandon the land, and were not so amenable to pressure as the *khudkasht* or settled *raiyats*.[2] As the competition for land increased, *pahi raiyats* came to pay

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[1] Field's Landholding, pp. 421 to 423.

[2] Sir John Shore's Minute dated 18th June, 1789, para. 225, in Fifth Report, Vol. I., page 140.

generally higher rates than the resident *raiyats*. Up to the present day *raiyats* are classified in Orissa as *thani* and *pahi raiyats*.[1] Where *thani raiyats'* rents were highest at the settlement of Orissa made over sixty years ago, the *pahi* rents have not yet risen up to them, but, in areas formerly most backward, *pahi* rents are now generally above *thani* rates.

The village community thus in time came to consist of (1) the descendants of the original patriarchal family; (2) *khudkasht* and *pahikasht raiyats*; (3) labourers, and (4) shopkeepers or dealers in grain and other commodities.

Khudkasht raiyats, origin of, according to other authorities;

6. The above is the account of the village communities and of the origin of *khudkasht* raiyats given by Mr. Justice Field, but, according to other authorities, the *khudkasht raiyats* were not settlers from outside, but original members of the village community, who cultivated their own lands, and were liable for their shares of the Government revenue, and for nothing in addition.

according to Mr. Baden-Powell.

7. According to Mr. Baden-Powell, the first and, so far as we know, the oldest form of the Hindu village was where the cultivators were practically owners of their several family holdings under a common headman. They were not responsible jointly for a share of the produce to the Raja, who had his own private lands. As ruler of the whole country, the Raja's right was represented, not by a claim to general ownership of the soil, but by his right to revenue, taxes, and cesses, and the power to make grants of waste. This—the first type of village—Mr. Baden-Powell calls the *raiyatwari* or non-landlord type. Subsequently, a second type of village sprang up (the landlord type), where a landlord or body of landlords claimed rights over the entire village intermediate between the Raja and the cultivators. It was a growth among and over the villages of the first type, and arose

[1] Orissa Settlement Report, Vol. I., page 353, para. 526.

from dismemberment of the Raja's or Chief's estate, from grants made by the Raja to courtiers, favourites, and minor members of the Royal Family, from the growth and usurpation of Government officers, and in recent times from the growth of revenue farmers, and from the establishment of special clans and families by conquest or occupation.[1]

Views of Messrs. Field and Baden-Powell contrasted.

8. According to Mr. Field, then, the *khudkasht* raiyats were outsiders who were permitted by the original descendants of the patriarchal family to settle in the village, and they had to contribute, to the Raja, a share of the produce as Government revenue, and to the village community something in addition.

According to Mr. Baden-Powell, each cultivator, in Hindu times, was "master and manager of his own holding," and there was nothing like a common account of expenses chargeable to the whole village and rateably levied from its members. The *khudkasht* or settled raiyats were in fact, according to this view, proprietors of the soil which they cultivated, so far as any notions of proprietary rights existed in early times.

According to all authorities the khudkasht raiyats had recognized rights.

9. But, whatever the true origin and position of the *khudkasht* raiyats may have been, it is agreed by all authorities that they had a recognized right to continue in possession of the lands they cultivated, and were not liable to be ejected from them so long as they paid the customary rent or revenue.[2]

Land tenures in Muhammadan times.

10. The Muhammadans at first left unaltered the system of the Hindus, which, to a large extent, fell in with their own notions. Under the Arabs the revenues of the empire were derived from (1) the land tax; (2) tithes or income tax (*ushr*, *zakat*, *sadakat*); (3) the fifth of the produce of mines and pasturage;

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[1] Baden-Powell's Land-systems, Vol. I., pp. 129, 130.

[2] Sir John Shore's Minute dated 18th June 1789, para. 389, in Fifth Report, Vol. I., page 162; Field's Landholding, p. 424; Sir Antony MacDonnell's Minute, paras. 12 to 15, in Gazette, pages 1984-85; Mr. O'Kinealy's note, Gazette, pages 450 to 457.

(4) the tax on non-Moslems (in lieu of military service); (5) customs dues; (6) salt and fishery tax; (7) tax paid by shopkeepers for the use of public places, in other words, for erecting shops or putting up stalls in the streets and squares; (8) tax upon mills and factories; (9) tax upon conveyances and luxuries; and (10) tax upon imports. The tax upon imports was abolished about the end of the ninth century, with a view to reviving maritime trade. The peasantry were an object of great solicitude to the Abbasside sovereigns, and every effort was made to lighten their burdens. Mansûr abolished the payment of the wheat and oat tax in money, and introduced the *mukâsimèh* system, *viz.*, the payment of taxes in kind according to a certain percentage of the crop. Upon the less important crops, and for date-palms and fruit trees, the old system of levying the tax in money was continued. As this led to extortion on the part of the revenue-collectors, the third Caliph extended the application of the rule introduced by his father, and directed that in every case the tax should be levied in proportion to the actual outturn. If the lands were peculiarly fertile and required no labour, the cultivator gave to the Government half the crops; if the watering of the ground was difficult and expensive, one-third; where it was still harder, only one-fourth, and sometimes even one-fifth. In taxing vineyards, date-groves, orchards, and such like, the crops were valued in money, and the rates calculated at half or one-third the sum. This system of taxation was called the productive rate system (*mukâsimèh*),[1] in contradistinction to the older system which was based upon measurement (*muhâsibèh*). In the year 204 A. H. (819-20 A. D.), Mâmun introduced a further reduction in the land tax, by which even in case of the most fertile lands the produce-rates were fixed at two-fifths of the whole instead of half. But in Babylonia, Chaldæa, Irâk, Mesopotamia, and Persia, there were numerous land-owners and peasant freeholders whose rents were permanently fixed upon the basis of

[1] This term is still in use in India.

agreements entered into at the time of the conquest. No variation could be made in the tax leviable from them, and they were thus protected from all harassment. The same boon was enjoyed by the village communities of Northern Persia and Khorâsân.[1]

11. There were thus three methods of taxing the land—1st, by measurement (*muhâsibèh*), with fixed amounts in money or kind or both; 2nd, according to the produce, payment being made in kind (*mukâsimèh*); 3rd, according to a fixed settlement based upon leases or agreements between the Government and private people (called *mukâtièh*).[2]

12. The early Pathan sovereigns of India appear to have maintained intact the revenue system of the Hindus. Under the Tuglak dynasty it was modified upon the lines of the Arab system. The arrangements introduced by them continued until the time of Sher Shah. He re-cast the entire method of revenue collection, and, whilst conforming to a considerable extent to the old indigenous institutions, gave greater security to the actual cultivator, and at the same time insured the regular realisations of the dues of the State. This was the system which the Moguls found in existence in India. Akbar's improvements were in the same direction. Cash payments were, to a large extent, substituted by his great minister, Todar Mal, for payments in kind. In the central parts of the Empire cash rates were fixed, measurements were made, and a uniform system of accounts was established by him. But these improvements were not extended in their entirety to the outlying provinces of Bengal or to parts of Bihar which were not measured by Akbar's officers. Even Akbar had to be contented with assessing villages as a whole in Bengal on the basis of the village-officers' reports. The original

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[1] History of the Saracens (Macmillan), pages 426 to 428.

[2] History of the Saracens (Macmillan), page, 428.

assessment by Akhbar of parts of Bihar was, however, based on regular measurements and ascertainment of assets.[1]

With the break-up of the Mogul Empire and the increasing independence of provincial governors, the leasing of the revenues became common, the control over the farmers became less, and the collection of the land-revenue became disorganised, to such an extent that, when the British Government took over the administration, the only limit to exaction from the *raiyats*, according to Sir John Shore, was the *raiyat's* ability to pay.[2]

But *Todar Mal's* rates remained as the basis of assessment wherever measurements and detailed inquiries had been made by his officers, though various *abwabs* had from time to time been superimposed on them:

Land Tenure in English period from 1765 to the Permanent Settlement.

13. In 1765 A. D., the *Diwani* of Bengal, Bihar, and Orissa was granted to the East India Company by Shah Alum, Emperor of Delhi. The grant of the *Diwani* was a grant of the right to collect the revenue of the three provinces, and to exercise judicial powers in all civil and financial causes arising in them.[3] When the *Diwani* was granted to the East India Company, the *Nawab Nazim* of Bengal, Bihar, and Orissa, resident in Murshidabad, continued for some years to retain in his own hands the administration of criminal justice and police, for the expenses of which the Company undertook an annual payment to him of 26 *lakhs* of rupees. By an agreement concluded with Nawab Saif-ud-daula in 1765, it was arranged that the protection of the provinces of Bengal, Bihar, and Orissa, and the force sufficient for that purpose, should be left to the discretion and good management of the Company. So that the grant of the *Diwani* became a cession to the East India Company of the Military Government

[1] Bengal M. S. Records, Introduction, page 28; Muzzaffarpur Settlement Report, page 28, paras. 72, 73.

[2] *See* Sir John Shore's Minute dated 18th June, 1789, paras. 30 to 40 and 528, in Fifth Report, Vol. I., pages 106 to 108 and 183.

[3] Field's Landholding, page 458; Harington's Analysis, Vol. II., page 25.

of the three provinces, together with the right to collect the revenue, administer civil justice, and control the finances. Though not in name the concession of sovereignty, it was a cession of all the essential attributes of sovereignty.

14. No change was made in the pre-existing system in the collection of revenue till 1769, when Supervisors were appointed for each province or district to superintend the native officers throughout the country in collecting the revenue and administering justice. The Supervisors received elaborate instructions, *inter alia*, to examine into the state, and produce and capacity, of the lands, the amount of the revenues, the cesses or arbitrary taxes, and all demands whatever made on the *raiyats*, either by the Government, the *zamindars* or collectors, with the manner of collecting them, and the gradual rise of every new impost.[1] They were to fix such demands as were legal, to abolish such as were fraudulent and unauthorized, and to redress the *raiyats'* grievances, and secure them from all further invasion of their property.[2]

15. The performance by the Supervisors of these manifold and difficult duties was soon found to be an impossible task. The Supervisors were altogether withdrawn in 1773, and the superintendence of the districts was left to native *Diwans* or *Amins*, and the making of the minute inquiries ordered in the letter of instructions to the Supervisors was positively prohibited by the Directors. The appoitnment of Supervisors had been followed by the institution of Revenue Councils of control at Murshidabad and Patna in 1770. In 1771 the East India Company stood forth as *Diwan*, and, by the agency of their servants, took on themselves the entire care and management of the revenues. In May, 1772, the native *Naib Diwan* was dismissed, and the office of *Diwan* was assumed, and its duties were performed by the Chief Members of the Councils of Murshidabad and Patna. In August

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[1] Field's Landholding, p. 463. O'Kinealy's Note, p. 446.
[2] Field's Landholding, p. 465; Mr.

of the same year, the management of the Revenue Department was transferred from Murshidabad and Patna to Calcutta, and the *Khalsa* or Exchequer was moved from Murshidabad to Calcutta.[1]

16. With the exception of the 24-Parganas, Burdwan, Midnapore, and Chittagong, which were managed by the Company's servants direct, the several districts were under native management from 1765 to 1771. Bihar had been settled for a term of years, but Bengal and Orissa had been settled from year to year.

The Quinquennial Settlement.

It was thought that this system was impolitic, and Committees of Circuit were appointed, who made a settlement, chiefly with farmers, for five years.

Annual settlements.

17. The farming settlement proved to be unsatisfactory. Speculators, incited by hopes of profit from extortion practised in collecting their dues, offered sums which they were unable to pay when the time came. On the expiration of the Quinquennial Settlement, annual settlements were made, preferably with the *zamindars*, till 1784, when the Court of Directors sent out orders for making an inquiry into the condition of the landholders, and for the establishment of permanent rules, based on the local laws and usages of the country, for the collection of revenue and the administration of justice.

The Decennial Settlement.

18. The Court of Directors directed that settlements should be made with the *zamindars* for ten years, care being taken to maintain the rights of all classes according to the usages of the country; and they expressed at the same time an opinion that it would be most in accord with the spirit of the Act of George III., Cap. 25, then recently passed, to make a permanent settlement of the revenue, based on a review of the collections of former years.

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[1] Field's Landholding, pp. 472, 473.

On receipt of these orders careful local inquiries were made, the results of which were embodied in Sir John Shore's Minutes dated 18th June,[1] 18th September, and 8th December, 1789.[2]

Sir John Shore was opposed to making the Decennial Settlement permanent at that time, because the relations between the *zamindars* and *raiyats* had not been definitely ascertained, and their respective rights, and the payments to be made by the *raiyats* to the *zamindars*, should, he thought, be defined and adjusted before Government limited its own demand on the *zamindars* for ever.

Lord Cornwallis was, on the other hand, sanguine that the combined effects of the limitation and permanent settlement of the State demand, and of Regulations which he made for the giving of *pattas*, would have the ultimate effect of adjusting the relations between the *zamindars* and *raiyats*.

The Permanent Settlement.

19. The Court of Directors, accepting Lord Cornwallis's view, directed that the Decennial Settlement should be made permanent, and, instead of having the rights of cultivators defined and adjusted once for all, contented themselves with reserving a general right to interfere, if their expectations and those of Lord Cornwallis should be disappointed, and it interference should be found necessary for the protection and welfare of the *raiyats*.[3] But, though the rights and obligations of the *raiyats* were not definitely ascertained and recorded before the conclusion of the Permanent Settlement, their rights were not altered or in any way affected by that Settlement. The popular idea that Lord Cornwallis was the originator of the Permanent Settlement is erroneous. What he really did was to carry out a pre-determined plan of the Court of Directors, of which the starting point was Pitt's Act of 1784. Equally erroneous is the idea that he was sent out to impose on Bengal a system of landed property

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[1] Field's Landholding, pp. 477, 480, 481, 487 to 489.

[2] Fifth Report, Vol. I., pp. 101, 555, 595, 599.

[3] Field's Landholding, p. 504.

based on English notions of ownership. While Lord Cornwallis was sent out to introduce a Permanent Settlement, it was to be a settlement according to the laws and customs of India, and according to the local system of land rights in Bengal.[1]

Origin of zamindars of Bengal, and their position, before the Permanent Settlement.

20. As to the persons with whom the Permanent Settlement was to be made, there were five different classes of claimants: *First*, the *zamindar* or landholder in the Indian sense of the word, who claimed a customary right to engage for the land-revenue of a certain area. *Second*, *talukdars* or intermediate holders between the *zamindars* and the cultivators. *Third*, the revenue-farmers, who, in many *zamindaris* and fiscal divisions, had been collecting the revenue during the previous 15 or 20 years. *Fourth*, military and other holders of lands held revenue-free, or at a low revenue, on the ground of services rendered to, or grants obtained from, the Native Governments previous to the accession of the East India Company. *Fifth*, the holders of lands granted either free of revenue, or at a low revenue, for charitable or religious purposes.

Of these different classes of claimants, the largest and most important were the *zamindars*, of whom again there were various classes. The first class of Bengal *zamindars* represented old Hindu and Muhammadan Rajas of the country previous to the Moghul Conquest by the Emperor Akbar in 1576, or persons who claimed that *status*. The second were Rajas or great landholders, most of whom dated from the 17th or 18th centuries, and some of whom were *de-facto* rulers in their own estates or territories, subject to a tribute or land-tax to the representative of the sovereign. The third and most numerous class were persons whose families had held the office of collecting the revenue during one, two, or more generations, and had thus, according to the practice of the East, established a kind of prescriptive right. A fourth, and also numerous class, was made up of revenue-farmers, who, since the grant of the *Diwani*

[1] Bengal M. S. Records, Vol. I., pp. 24, 25, 26.

in 1765, had collected the land-revenue for the East India Company under the system of yearly leases or five years' leases.

It is these differences in origin which have led to such contradictory statements as to the title of Bengal *zamindars*.

Before the Permanent Settlement, there were some *zamindars* who held a hereditary status in their respective territories; there were others who, by armed resistance, had won for themselves partial or intermittent exemption from payment of revenue. Such *zamindars* held princely courts, maintained their own bodies of armed followers, dispensed justice in their own estates, and handed down their position from father to son.

The title of these *zamindars* clearly differed from that of the class who were mere farmers. But all alike paid tribute or land-tax to the Muhammadan Government at Murshidabad, and, in case of death, deemed it prudent to obtain from that Government an official acknowledgment (*sanad*) of succession.

The Bengal *zamindars*, at the time of the Permanent Settlement, represented the heterogeneous results of two sorts of influences; the long-continued weakness of the Provincial Government, which made for their independence down to the end of the seventeenth century, and the fiscal policy of *Murshid Kuli Khan*, in the early part of the eighteenth century, followed by the farming of the East India Company, which tended to reduce the *zamindars* to mere agents for the collection of the land-tax. In one respect they all held the same position in the eye of the Government in that each of them rested his title as *zamindar* on a *sanad* or letter from the State authorizing him to collect the land-revenues.

Practically, by the time the East India Company acquired the *Diwani* of Bengal in 1765, the official title of Bengal *zamindars*, as a whole, had merged in a title by *sanad*, which explicitly stated their position to be the *Khidmat*, "office" or "duty," of collecting the land-revenue within a certain area. The *sanad* made no mention of heirs, and conveyed no right

of transference or inheritance. But, as a matter of custom, *zamindaris* were sometimes transferred under the Mogul Government, both by sale and inheritance, the purchaser or heir obtaining a fresh *sanad* from the Government.

The framers of the Permanent Settlement had, therefore, not only to deal with a heterogeneous body of *zamindars* differing as to historical origin and actual *status*; they had also to deal with a double *status* of title based on *sanad* or official grant, and upon custom. They endeavoured to get rid of all such complexities. They limited for ever the land-tax which each *zamindar* could be called upon to pay, and recognized the right to transfer *zamindari* estates, whether by sale or inheritance.[1]

The result of the Permanent Settlement on the *status* of the *zamindars* in 1793 was to place all classes of *zamindars* on a uniform legal basis, and so to obliterate the previous differences in the customary *status* of the several classes which had grown out of differences in origin. Even before the Permanent Settlement, the effect of the farming system from 1766 to 1789 was to level down the ancient *zamindars* of the first, second, and third classes, and to level up the revenue-farmers into new *zamindars*.

Effect of the Permanent Settlement and subsequent legislation down to 1817 on the status of the zamindars and raiyats.

21. Sir Antony MacDonnell has described the effect of the Permanent Settlement and subsequent legislation down to 1817 on the status of the *zamindars* and *raiyats* thus[2]:—

Effect of Permanent Settlement on status of *zamindars*.

The modifications which the Permanent Settlement introduced into the relations between the Government and the *zamindars* are specifically set forth in the Proclamation dated 22nd March 1793, which was afterwards enacted into Regulation I. of the same year. That Proclamation contained two principal provisions—it fixed for ever the revenue which had been assessed on the various estates at the Decennial Settlement which had just been concluded

[1] Bengal M.S. Records, Chapter II., and authorities there cited.

[2] Sir Antony MacDonnell's Minute, paras. 11 to 13, 16 to 20.

Note by Editor.—It is an open secret that the auther of this famous minute of September 20th, 1893, was Mr. Finucane, joint author of this commentary; and it was published over Sir Antony (now, Lord) MacDonnell's signature to lend more authority to it.

and it declared the settlement-holders, whom it designated "proprietors of the lands," privileged to transfer "to whomsoever they think proper, by sale, gift, or otherwise, their proprietary rights in the whole or any portion of their estates, without applying to Government for its sanction to the transfer." There were some subsidiary stipulations, to which it is unnecessary to refer here more specifically, but the intention and effect of the Proclamation was to abandon, on the part of Government, the right to increase the revenue which had been assessed on the estates of the *zamindars*, and, subject to summary sale for non-payment of that revenue, to constitute the *zamindars, as far as the Government was concerned*, owners of these estates.

Effect of Permanent Settlement on status of *raiyats*.

The rights which the Government possessed were admittedly not exhaustive of all the interests in the land. Under the customary law of the country, as admitted by the authors of the Permanent Settlement, the *raiyats*, too, had rights which it was not discretional with the Government to alter or annul. Those customary rights of the *raiyats* the Permanent Settlement neither did, nor could, affect or prejudice in any degree whatever (*see* section 15, Regulation VII., 1799, clauses 7 and 8).

Safeguards for *raiyats'* rights provided by Permanent Settlement Regulations, and neglect of them. Effects of neglect.

The safeguards by which Lord Cornwallis hoped to protect the interests of the *raiyats* were, briefly put, three in number: The first was the injunction on *zamindars* to prepare *pattas*, subject to the approval of the Collector (to preclude the introduction of new clauses or covenants); the second was the deposit in the Collectorate of the standard of measurement whereby the areas of holdings might be guaranteed; and the third was the maintenance of the accounts of the *raiyats* by the village *patwari*, whereby the permanency of the rates might be secured. It was intended by these safeguards to assure to the *raiyats* the possession of a certain area of land on certain specific conditions and at specific rates of rent.

After the Permanent Settlement had been concluded, the *zamindars* began to evade tender of *pattas*, or tendered them at more than the customary rates. The *raiyats* refused to accept these *pattas*, which they either did not understand, or found to be unfair. There was a withholding of rents, much confusion soon prevailed, and many estates were sold, especially in Lower Bengal, for arrears of revenue. This circumstance caused the East India Company, which had to pay its dividends and to meet the expenses of the great war with *Tippoo*, in which Lord Wellesley was then engaged, some alarm for the security of its own revenue. The *zamindars* declared they could not pay the revenue unless their hands were strengthened against the recusant *raiyats*; and the Government, pressed by want of money, agreed to strengthen the hands of those on whom it immediately depended for the punctual payment of its revenue.[1]

[1] The ordinary procedure for realisation of revenue from defaulters before the Permanent Settlement consisted in attachment of the defaulter's goods and lands, dispossessing him of his estate, and confinement, more or less rigorous, of his person. The Permanent Settlement substituted the process of sale of the defaulter's estate under the "*Sunset Law*." The result of the apparently milder procedure was the ruin of many of the ancient and once powerful families. Within 20 years of the Permanent Settlement, from one-third to one-half of the whole landed property in Bengal had been sold for arrears of revenue. Hence, these severe laws were passed to strengthen the hands of the *zamindars* so as to enable them to pay the revenue.—Bengal M. S. Records, Chap. V.

Effects of the Settlement on the course of legislation. Regulation VII. of 1799—the notorious *Haftam*.

The notorious *Haftam*, or Regulation VII. of 1799, was therefore enacted "for enabling proprietors and farmers of land to realize their rents with greater punctuality; for providing against unnecessary delay in the payment of the public revenue assessed upon the lands; and for securing the ultimate recovery of arrears of revenue by a sale of the landed property, from which it may be due, at the close of the year." This Regulation gave the landlords practically unrestricted right of distraint. They were empowered "to distrain, without sending notice to any Court of Justice or any public officer, the crops and products of the earth of every description, the grain, cattle, and all other personal property, whether found in the house or on the premises of any other person." Moreover, with a view to give the landlords greater power still over their tenants, Magistrates were required to punish by fine or imprisonment *raiyats* who could not establish the truthfulness of complaints of hardship made against landlords, or their distraining agents, and the Civil Courts were directed to indemnify *zamindari* officers or others employed in the collections when improperly summoned. It was further declared that, if any person should wantonly and without cause be the means of summoning to the Courts of Justice, Civil or Criminal, the principal officer or any officer engaged in collecting the rents of any *zamindar*, *talukdar*, or other landholder or farmer of land, and a loss of rent or other evident damage should be sustained by the landholder or farmer in consequence of such wanton and unnecessary summons, an action should lie against the party who caused the summons, for such loss or damage, and, on proof thereof, the party injured should be entitled to recover the amount, with all costs of suit.

Evil effects of Regulation VII. of 1799 on the rights of the *raiyats*.

This Regulation was not meant to define or limit the actual "rights of any description of landholders or tenants, which could properly be ascertained and determined by judicial investigation only, but merely to point out in what manner defaulting tenants might be proceeded against in the event of their not paying the rents justly due from them, leaving them to recover their rights, if infringed, with full costs and damages, in the established Courts of Justice." These last provisions, says Mr. Justice Field, scarcely required comment. "There is scarcely a country in the civilized world in which a landlord is allowed to evict his tenant without having recourse to the regular tribunals; but the Bengal *zamindar* was deliberately told by the Legislature that he was at liberty to oust his tenants if the rents *claimed by him* were in arrear at the end of the year, leaving *them* to recover their rights, if infringed, by having recourse to those new and untried Courts of Justice, the failure in which might be punished with fine or imprisonment."

The result of this Regulation was that, in twelve years, the ancient rights of the *raiyats* throughout Bengal were on the verge of obliteration.[1]

Remedies applied (Regulation V. of 1812) (the *Panjam*). Revival of the *Patwari* system (Regulation XII. of 1817).

There was, however, no intention to abrogate the rights of the *raiyats* by Regulation VII. of 1799; and when, during Minto's Administration, the evil effects of the Regulation became known, there was a strong revulsion of official feeling, which produced Regulation V. of 1812 (the *Panjam*) whereby it was hoped to correct the

[1] *See* the Minute dated November 1814, by Mr. Henry Colebrooke, printed in the Supplement to the *Calcutta Gazette* of 25th October 1893, p 2073.

bad effects of Regulation VII. of 1799. "Under the *Haftam* process the person of the *raiyat* could be seized in default; under the *Panjam* process his property could be distrained; and in either case the proceedings commenced by what has been described as a strong presumption equivalent to a knock-down blow against the *raiyat*.[1]" The effect of Regulation V. of 1812 was unsatisfactory. Lord Cornwallis's plan of giving *pattas* had failed totally, and it was therefore resolved to strengthen and re-organise the indegenous system of *patwaris* and *kanungos* as an independent agency for maintaining a record of the reciprocal rights of both parties. The *zamindars* were bound by section 62, Regulation VIII. of 1793, to maintain a *patwari* in every village, who was to be a Government servant; but they gradually converted the *patwari* into their own private servant or *gomasta* The reform then embarked on was embodied in Regulation XII. of 1817.

Endeavours to enforce Regulation XII. of 1817 frustrated. Proposal to have a regular record-of-rights.

When that Regulation became law, the Board of Revenue proceeded to take action on it by prescribing what the duties of the *patwaris* should be. It soon, however, became apparent that, as an engine for the protection of the tenant, by bringing on record and maintaining the established rates and rules by which rents were to be regulated, Regulation XII. of 1817 was as useless as the provisions of Regulation VIII. of 1793 had been.

Things had now been advanced to this stage. The failure of Lord Cornwallis's method of a record-of-rights by means of *pattas* had been recognized; the failure of the Patwari Regulation XII. of 1817 was being fast admitted.

Proposal in 1822 for a survey and record-of-rights.

22. In a despatch dated the 1st of August 1822, the Government of India proposed to the Court of Directors to make a survey and record-of-rights of the permanently-settled districts of Bengal as being the only effectual means of defining and maintaining the rights of the *raiyats*. In that despatch it was said:—

> We freely admit, even though the *raiyats* of Bengal had possessed no right of holding their lands at determinate rates, considered in relation to the sovereign, it was unquestionably competent to Government, in fixing its own demand, to fix also the rates at which the *malguzar* was to make his collections, and it was clearly intended to render perpetual the rates existing at the time of the Permanent Settlement. The intention being declared, the rule is of course obligatory on the *zamindars*.[2]

In reply, the Court of Directors, in 1824, expressed their approval of this proposal.[3]

An exhaustive enquiry was set on foot to ascertain precisely what had been the precise effect of the endeavours to re-organize the *patwari* and

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[1] Bengal Administration Report, 1872-73, p. 81.

[2] Sir Antony MacDonnell's Minute, para. 20, in *Gazette*, p. 1988.

[3] *Ibid*, para. 21, *Gazette*, p. 1989.

kanungo systems on the basis of Regulation XII. of 1817. The results of this inquiry were reported to Government in the Board of Revenue's Letter No. 2199 of 11th May 1827. Practically it amounted to this, that—to quote from the letter—"until means are devised for ensuring the authenticity of the documents furnished, whether they relate to accounts, mensuration, or *raiyatwari* assessments, the office of *kanungo* will mislead instead of giving any useful information."[1]

Record-of-rights not carried out. Fresh Legislation injurious to the raiyats. (1) Reg. XI. of 1822.

23. The design to make a survey and record-of-rights was not, however, carried out. While the correspondence relating to it was proceeding, fresh legislation, which proved injurious to the *raiyats*, was undertaken. A Regulation, No. XI., was passed in 1822, relating to the sale of land for arrears of revenue, which, being, like the *Haftam*, intended to enable the *zamindars* to realize their rents and then discharge the Government revenue, really placed them in a position of abnormal superiority to their *raiyats*.[2]

Act XII. of 1841.

24. The Regulation of 1822 remained in force until 1841, when it was repealed by Act XII. of that year, apparently without any saving of the rights acquired under the Regulation by purchasers who had not exercised them before the repeal.[3] Act XII. of 1841 enacted (section 27)—

that the purchaser of an estate sold for the recovery of arrears of revenue due on account of the same, in the permanently-settled districts of Bengal, Bihar, Orissa, and Benares, should acquire the estate free from all incumbrances imposed upon it after the time of settlement, and should be entitled, after notice given under section 10 of Regulation V. of 1812, to enhance at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions—(1) tenures which were held as *istimrari* or *mukarrari* at a fixed rent more than twelve years before the Permanent Settlement; (2) tenures existing at the time of the Decennial Settlement, and not proved to be liable to increase of assessment on the grounds stated in section 51 of Regulation VIII. of 1793; (3) lands held by *khudkasht* or *kadimi raiyats* having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force; (4) lands held under *bonâ-fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases; (5) farms granted in good faith at fair rents, and for specified areas by a former proprietor for terms

[1] Sir Antony MacDonnell's Minute, para. 22, *Gazette*, p. 1989.

[2] *See* Field's Landholding, paras. 665, 669.

[3] Field's Landholding, p. 666.

not exceeding twenty years, under written leases registered within a month from their date.[1]

Acts I. of 1845 and XI. of 1859.

25. Act XII. of 1841 was repealed by Act I. of 1845, which, however, re-enacted the above provisions *verbatim*.

This latter Act remained in force fourteen years, until it was repealed in 1859. Section 37 of Act XI. of 1859 (which was passed five days after Act V. of 1859) enacts that the purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar, and Orissa, sold under the Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions—(1) *istimrari* or *mukarrari* tenures held at a fixed rent from the time of the Permanent Settlement; (2) tenures existing at the time of Settlement, but not held at a fixed rent, provided that the rents of such tenures shall be liable to enhancement under any law for the time being in force; (3) *talukdari* and other similar tenures created since the time of Settlement, and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act; (4) leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying-grounds have been made, or whereon mines have been sunk: but the rent of these lands can be enhanced under the law for the time being in force if they can be shown to have been held at what was generally an unfair rent, and if they have not been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years: Provided always that nothing in this section contained shall be construed to entitle any such purchaser to eject any *raiyat* having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such *raiyat* otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively all engagements made since the time of Settlement, may have been entitled to do. In order to understand fully the above provisions of Act XI. of 1859, they must be read with Act X. of 1859.[2]

Effect of the Sale-laws on the raiyats, according to Mr. Field and Sir Henry Ricketts.

26. "From the account given of them," remarks Mr. Field, "it will appear that the mischievous power of annoyance, interference, and extortion, which these sale-laws have given to the auction-purchaser, have been fatal obstacles to agricultural improvement, and have proved at once the source and the instrument of oppression and wrong." He cites the following remarks by Sir Henry Ricketts on the same subject: "We can talk of it and write of it

[1] Field's Landholding, p. 666, 667.
[2] Field's Landholding, p. 667, 668. Act X. of 1859 took away the power of ejectment.

with indifference, but, to the tenants of an estate, a sale is the spring of a wild beast in the fold, the bursting of a shell in the square. It is the disturbance of all they had supposed to be stable."[1]

Effect of the Sale-laws according to Mr. O'Kinealy.

27. Mr. O'Kinealy, on the other hand, expressed the following views on the question of the effect of the sale-laws :—

Undue prominence has been given to the enactments on this subject. The Government had admittedly the power to make such provision as was necessary to prevent any diminution of the public assessment, as, against it, no person could claim to hold at less than the *pargana* rates; and this right it transferred to the auction-purchaser for the purpose of providing that the *sadar jama* should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the defaulters, and thus to prevent the possibility of an estate being sold for less than the arrear due on it. But this was an exception to the general rule regulating the powers of landholders, and not the general rule itself, and it was subject to other limitations.

13 W. R. (P. C.) 24; 18 W. R. 469.

It is admitted on all hands that, up to the Sale Law of 1822, no *raiyat* could be dispossessed at the will of an auction-purchaser. He was, at most, liable to pay the full *pargana* rate, and could only be ejected after refusal to pay the enhanced rent. In that year a sale law, Regulation XI. of 1822, was passed, which remained in force until 1842, and, by virtue of it, the purchaser could at his option wholly avoid any tenure unless it fell within the class contemplated in section 32 of the Regulation; but the power was one which he might or might not exercise, and it was incumbent on him, if he elected to eject, to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure; if not, the privilege, right, or by whatever name it may be called, was lost for ever. It was not a power that could be exercised long or even a considerable time after the sale, and was limited by law, which prevented any purchaser obtaining from a tenant more than the *pargana* rates, and the prohibition against arbitrary ejectment for the mere sake of giving the land to another. This power to eject, which continued under Act I. of 1845, was taken away by Act X. of 1859, and from that very time the auction-purchaser, under Act I. of 1845 or Act XI. of 1859, could only enhance, but not eject, an occupancy-tenant, save after decree.

W. R., Vol. XIII., p. 26; 18 W. R., p. 472; 2 W. R. 16

If, then, we take into consideration the very few forced sales that actually took place under these sale laws, and the insignificance of the estates sold, and if we except all *raiyats* protected by the sale law, all *raiyats* whose position has been assured through express or implied recognition by receipt of rent or otherwise, and all *raiyats* against whom auction-purchasers have not elected by some outward sign to proceed, I confidently assert that not one in fifty thousand of the *raiyats* of Bengal has had his position affected by the revenue-sale laws.[2]

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[1] Field's Landholding, p. 669, 670.

[2] Mr. O'Kinealy's note, Gazette, pp. 469, 470.

Intentions of the framers of Act X. of 1859.

28. It has been truly remarked that there never was an Act of so great importance which received during its progress through Council so little consideration as Act X. of 1859. Mr. (now Sir Courtenay) Ilbert explained, in his speech when moving for leave to introduce the Bengal Tenancy Bill in Council, that—

> The circumstances under which Act X. of 1859 was introduced, and the changes which it underwent in its passage through the Legislature, have recently been submitted to a very careful examination, and the result of his examination has been to bring out clearly two points—
>
> (1) that the Bill, as originally introduced, was not intended to codify the law of landlord and tenant in Bengal, but to amend one particular branch of it—that relating to the recovery of rent; and
>
> (2) that the provisions of the Act which have given rise to most controversy and difficulty were introduced into it by way of afterthought, and that the most important of these were based on a misconception of existing facts.[1]

The object of the Bill, which became Act X. of 1859, was stated by Mr. G. Currie, who introduced it in Council, to have been merely "to re-enact in a concise and distinct form the "provisions of the present law relating to the rights of the "*raiyats* with respect to the delivery of *pattas*, the adjustment "of rates of rent, and the occupancy of land, and to the preven-"tion of illegal exaction and extortion in connection with "demands for rent."

The Bill, as originally introduced, declared—

First, that hereditary *raiyats* holding lands at fixed rates of rent were entitled to *pattas* at those rates, and that all other *raiyats* were entitled to receive *pattas* at *paryana* rates, or, if there were no established *pargana* rates, then according to the customary rates payable for land of a similar description in the places adjacent (*Sec. III.*):

Second, that every resident *raiyat* had a right of occupancy in the land held or cultivated by him, whether held under a *patta* or not, so long as he paid the rent payable on account of

[1] Selections, p. 43.

the same; but this rule did not apply to *khamar*, *nij-jot*, or *sir* land (*Sec. IV.*)[1]

The draft sections just referred to were subsequently altered in Committee, the grounds for altering them to the shape which they finally assumed being stated by the Committee thus:—

We have thought it right to define more particularly the 'hereditary *raiyats*' who are to be recognized as having a right to hold lands at fixed rents. * * * We think that at this late date no one should be required to prove a title antecedent to the Permanent Settlement, and we have framed the amended section accordingly, adding a clause which will have the effect of placing a *raiyat* who has held at a fixed rate for 20 years substantially in the position of a *raiyat* who has held from the time of the Permanent Settlement unless it be shown by the other party that the rent has varied intermediately.

The original Bill, following the phraseology of the existing law, declared *raiyats* not holding at fixed rates entitled to *pattas* at *pargana* rates. This expression has been objected to on the ground that there are really no known *pargana* rates. The recognition of a right of occupancy in the *raiyat* implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sadar Court, and the Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the *raiyat* to hold at 'customary and fair' rates. We have adopted similar phrases, and, in this section and sections 17 and 18, have endeavoured to lay down rules by which the 'fairness' of the rate may be ascertained.

The laws in force speak of '*khudkasht raiyats*' as possessing rights of occupancy, and in some places* the word *khudkasht* seems to be considered as synonymous with 'resident.' Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that, after much inquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the existing practice and recognized rights, that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent, and altered the section accordingly.

* Regulation LI, 1795, section 10
Regulation VIII., 1819, section 11, clause 5.
Regulation VIII., 1819, section 18, clause 5.

Effect of Act X. of 1859 according to Mr. O'Kinealy.

29. These very important alterations were treated as mere verbal emendations, and were not much discussed in Council. Though the intention of the Committee was not to change, but to elucidate, the law, yet the effect of the sections declaring a right of occupancy to be acquired by twelve years' possession was,

[1] Sir Alexander Mackenzie's note, Gazette, pp. 407, 408.

according to Mr. O'Kinealy, to inflict serious injury on the resident *raiyats* by placing them in the position of tenants-at-will in respect of all lands of which they could not prove twelve years' continuous occupancy, while the effect of the sections declaring the *zamindars* entitled to enhancement of rent by reason of increase in the value of the produce was, according to Mr. O'Kinealy, to add a new ground of enhancement, which was previously unknown alike to the common law and the statute law of Bengal. At the passing of Act X. of 1859, said Mr. O'Kinealy, every ordinary resident *raiyat*—

> was entitled to receive *pattas* according to the *pargana* rates; he was equally entitled to their renewal; and the result of this was that the rates of rent but very slowly increased, and increased up to 1822, only by the sheer force of the power which the *zamindar* obtained from being looked on as an English proprietor.[1]

> *Zamindars* never had, before the passing of Act X. of 1859, the right to enhance on the ground of a general increase of prices, and one of the objects of the Permanent Settlement was to prevent any such claim being raised. The Government of that time considered, by declaring the common law, that *zamindars* were bound to give *pattas* at the customary rates with a right to perpetual renewal, they had guarded the *raiyat* against all probability, indeed, possibility, of such a claim being advanced, and where they held possession of lands, the *raiyats* were protected. But, in regard to the lands held by *zamindars*, the principle of non-intervention between *zamindar* and *raiyat*, inculcated and enforced after the Settlement, was destructive of the *raiyats'* interests. The expectations based on the promulgation of the laws, the public spirit of the people, the interference of the Courts, and the penal provisions compelling *zamindars* to give leases defining the rates of rent, were never realized. The *zamindars* got the period within which they were compelled to grant leases extended until the object of the law was forgotten, and then they ignored it.[2]

According to Mr. O'Kinealy, Act X. of 1859 in effect deprived resident *raiyats*, as such, of the right to claim *pattas* at *pargana* rates, and limited the right to claim *pattas* at fair and equitable rates to those who could prove twelve years' occupancy, while the Act also furnished *zamindars* with a new weapon for enhancement on the score of increase in the value of the produce.

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[1] Mr. O'Kinealy's note, Gazette, p. 466. [2] Mr. O'Kinealy's note, Gazette, p. 477.

30. According to Mr. Field on the other hand, the direct effect of the twelve years' rule was, that a large number of tenants who, before the Act, were mere tenants-at-will, and so liable to be rack-rented, at once acquired a protected tenure, while the net result of the working of the provisions regarding enhancement was, according to him, "that, while a large number of *raiyats* have, under the provisions of the Act of 1859, received protection from eviction, and therefore from rack-renting, those provisions of the Act have completely broken down by which the Legislature undertook to provide for the adjustment of rents in cases in which the *zamindars* were conceded to have a reasonable claim to enhancement." [1]

Effect of Act X of 1859, according to Mr. Justice Field.

31. Act X. of 1859 was amended by Bengal Act VIII. of 1869, by which the trial of rent-suits was transferred from the Revenue-authorities to the Civil Courts.

Bengal Act VIII. of 1869.

32. In the preceding paragraphs, we have attempted to sketch the history of legislation on the Rent Law of Bengal down to the passing of Act X. of 1859. We have quoted freely from the best authorities, and, where they differ, we have endeavoured to lay before our readers their divergent views in their own words without advancing any opinions, or stating any theories, of our own.

Reference to original authorities invited.

33. We now proceed to describe the circumstances which led to the passing of the present Act (VIII. of 1885), which we cannot do better than by reproducing an extract from a report on the administration of Sir RIVERS THOMPSON, which was compiled under orders of the Government of Bengal: [2]—

Official account of circumstances which led to passing of Bengal Tenancy Act.

When Sir RIVERS THOMPSON assumed the administration of Bengal in April, 1882, the question of the amendment of the Rent Law in the Lower Provinces, which had for nearly ten years been the subject of agitation and discussion, had reached a stage at which it was certain that some legislative measure would be introduced, though the nature of that measure had not yet been finally determined. The necessity for legislation had, indeed, been apparent ever since the occurrence, in 1873, of the serious agricultural disturbances in Pabna. The Bihar famine of the following

[1] Field's Landholding, p. 764.

[2] Bengal Supplementary Administration Report, 1882-87, pp. 94 to 99.

year diverted the attention of the Government to more pressing duties, but the report of the Famine Commission dwelt strongly on the necessity of placing the relations of landlord and tenant in Bengal upon a surer basis. The Agrarian Disputes Act of 1876 was passed by Sir R. TEMPLE's Government as a temporary measure to meet emergencies like those of 1873, pending the fuller consideration of the whole question. A Bill dealing with the principles upon which rents should be fixed was prepared in 1876, but was not farther proceeded with, and, in 1878, the Government of Bengal proposed a measure intended to provide only for the more speedy realisation of arrears of rent. This Bill was introduced into the Bengal Council, but it was found impracticable to confine it to the limited object indicated by its original title. The Select Committee on the Bill recommended that the whole question of a revision of the rent-law should be taken in hand, and, in April 1879, the Government of India sanctioned the appointment of a Commission to prepare a digest of the existing law, and to draw up a consolidating enactment. Proposals which had been separately made for amending the rent-law in Bihar were also referred to the Commission for consideration.

The Report and draft Bill of the Commission were presented in July 1880, and, after the whole question had been further considered, the matured proposals of Sir ASHLEY EDEN's Government were submitted to the Government of India in July 1881. In March 1882, these papers were forwarded by the Government of India to the Secretary of State with an important despatch, in which the history of the question was reviewed, and the views of the Governor-General in Council, of which Sir RIVERS THOMPSON was a member, were fully explained.

Such was the position of affairs when Sir RIVERS THOMPSON became Lieutenant-Governor of Bengal. The reply of the Secretary of State was received in September 1882. His Lordship, while concurring in the view that legislation was necessary, and while accepting the majority of the recommendations made by the Government of India, demurred to a proposal which formed a prominent feature of the despatch. The Rent Commission had desired to maintain the existing rule by which the occupancy-right was acquired by twelve years' continuous possession. The Government of Sir ASHLEY EDEN had recommended that the occupancy-right should be enjoyed by all resident *raiyats*. But the Government of India proposed to take the classification of lands instead of the status of the tenant as the basis on which the recognition of the occupancy-right should be effected, and to attach the right to all *raiyati* lands. It appeared to the Secretary of State that this involved a great and uncalled-for departure from both the ancient custom and the existing law of the country, and he declined to sanction it. The Government of India defended their proposals in a subsequent despatch written in October 1882, but the Secretary of State adhered to his former opinion though he expressed his willingness to assent to the introduction of the Bill in the form which the Government of India preferred. The Government of India, however, declined to introduce a Bill in a form of which the Secretary of State disapproved, and it was determined that the measure should be framed upon the lines suggested in the Secretary of State's despatch.

A revised draft of the Bill was prepared in the Legislative Department af the Government of India, and, on the 2nd March 1883, Mr. Ilbert moved in Council for leave to introduce it. On the 12th March Sir STEUART BAYLEY, in whose charge the Bill had been placed, moved that it should be referred

to a Select Committee. After a long debate, extending over two days, the Bill was referred to a Select Committee. . . The meetings of the Committee commenced in November 1883, and were carried on till the following March, when the Committee presented a preliminary report accompanied by a revised draft of the Bill. Four members of the Select Committee recorded minutes of dissent from the report.

The revised Bill was republished, and was subjected to a careful examination by divisional conferences of the executive officers of Government, as well as by judicial officers and by the non-official public. When these opinions had been received and considered, the views of the Government of Bengal were submitted to the Government of India in a letter dated the 15th September 1884 . . . . . Among other points of less importance, Sir RIVERS THOMPSON proposed to allow the free transfer of occupancy-holdings in Bengal, giving the landlord, however, a veto if the transfer were to any but an agriculturist; to leave such transfers in Bihar to be regulated by custom; to omit the clauses of the Bill which gave the landlord a right of pre-emption; to abandon the provisions for enhancement on the grounds of the prevailing rate, or of the increased productive powers of the land; to withdraw all limitations upon enhancement by suit, but to maintain them in cases of enhancement by contract; to restore the check which limited enhancements to a certain proportion of the gross produce; to provide that tables of rates should be prepared only on the application of parties; to retain substantially the existing law of distraint; and to provide for a cadastral survey and the preparation of a record-of-rights.

The Select Committee resumed its sittings in November 1884, and, early in the following year, it presented its final report, which was accompanied by minutes of dissent from several members of the Committee. The debate, however, which followed, showed that the great majority of the dissentients fully accepted the principles of the Bill, though they thought some of its provisions unsatisfactory or incomplete.

On the 27th February 1885, the Bill was brought forward in Council by Sir STEUART BAYLEY, who moved that the report of the Select Committee should be taken into consideration. To this an amendment was moved that the Bill should be republished before being further proceeded with. After an exhaustive debate, which extended over two days, and in which the principles of the Bill were fully discussed, the amendment was rejected by a large majority. The Council then proceeded to discuss the clauses of the Bill. Above 200 amendments were placed upon the notice paper; but many of these were formally withdrawn, or were tacitly dropped. Upon all the important provisions, however, of the Bill, there was an animated debate, which extended over the 4th, 5th, 6th, 9th, and 11th of March. During this discussion, it was the object of the Government of Bengal, while resisting those amendments which subverted or weakened the principles which the Bill was intended to establish, to strengthen the position of the occupancy-*raiyats* by extending the right to the *pargana* instead of confining it to the village; to modify the rule of enhancement on the ground of the prevailing rate; and to give the non-occupancy *raiyat* the security of a five years' initial lease. These amendments were not accepted by the Council, but the Government of Bengal was successful in maintaining, against strong opposition, a limitation upon the enhancement of an occupancy-*raiyat's* rent by private contract. The Bill was passed by the Council on the 11th March; it received the assent of the Governor-General on the 14th, and became law as Act VIII. of 1885. The Act came into force on the 1st November following, except the Chapters relating to

distraint and to deposit of rent, the operation of which was postponed to the 1st February 1886, to enable the High Court to frame the necessary rules.

The Bill which thus became law differed in some important particulars from the measure which had been introduced into Council two years before. Perhaps no legislative enactment was ever subjected to fuller examination, or to more searching criticism. The question had engaged the attention of the Government and the public for more than ten years; the Select Committee, which included members holding the most diverse views, held no less than 64 meetings, and had before it several hundreds of reports, opinions, and memorials. The result was that the Bill which finally commended itself to the approval of the Council was in some respects a compromise, and, if it was less thorough and complete, was certainly a more practical and workable law than the draft which was originally laid before the Council. Some of the more important modifications which were introduced may be briefly noticed here. The Bill, as originally brought in, embodied the provisions for the sale of *patni taluks;* but it was eventually determined to leave Regulation VIII. of 1819 untouched. The settled *raiyat* acquired by the original Bill an occupancy-right in all land held by him in the village or estate. The Act limited this to land held in the same village. The occupancy-*raiyat* was empowered to transfer his holding, subject to a right of pre-emption by the landlord at a price to be fixed by the Civil Court. The pre-emption clauses were struck out, and the power of transfer was left to be regulated by local custom. The rent of an occupancy-*raiyat* could not be enhanced, under the Bill, to an amount exceeding one-fifth of the gross produce, nor that of a non-occupancy *raiyat* to an amount exceeding five-sixteenths: but no limitation of this kind finds a place in the Act. In suits for enhancement, the Bill provided that no increase of demand in excess of double the old rent should be awarded: but there is no corresponding provision in the Act. A prominent feature of the Bill was the preparation of tables of rates, by which lands were to be classified according to the capabilities of the soil, and rent-rates were to be fixed, which should be in force for not less than 10, or more than 30, years: but this Chapter was entirely struck out.[1] The Bill provided that the non-occupancy *raiyat*, if he were ejected from his holding, should receive compensation for disturbance: but no such stipulation will be found in the Act.

The only material point in which the Bill was modified in the opposite direction was in the enhancement of an occupancy-*raiyat's* rent by contract out of Court. The Bill allowed such enhancements to the amount of six annas in the rupee upon the old rent: but the Act reduced this to two annas in the rupee, the Government of Bengal being strongly impressed with the danger of allowing pressure to be put upon tenants to enter into contracts which would virtually defeat the object of the Legislature.

The Bengal Tenancy Act, perhaps the most important measure which has passed into law since the Regulations of 1793 were promulgated, will be found on examination to have had three main objects in view, to one or other of which almost all of its sections can be referred. The ancient agricultural law of Bengal was founded on a system of fixity of tenure at customary rents. But this system was gradually ceasing to be suited to the altered economic conditions of the country, and the attempts which

[1] The provisions regarding Tables of Rates were partially restored by the Amending Act, Bengal Act III. of 1898.

were made to solve the question by the substitution of positive law, for customary usage had hitherto been unsuccessful. In some parts of Bengal, in which the *zamindars* were powerful, the *raiyat* was treated as a mere tenant-at-will: in other parts, in which the population was comparatively sparse, the *raiyat* refused to pay any rent unless the *zamindar* agreed to his terms. Act X. of 1859 rather added to the difficulty than removed it. On the one hand, this Act made it almost impossible for the *raiyat* to establish a right of occupancy: on the other hand, it placed insuperable obstacles in the way of the *zamindar* who sued for an enhancement of his rent. The Courts of Law, with rigid impartiality, required the *raiyat* to establish his occupancy-right by showing that he had cultivated the same plot of ground for twelve successive years, and demanded from the landlord the impossible proof that the value of the produce had increased in the same proportion in which he asked that his rent should be enhanced. The legal maxim, *semper presumitur pro negante*, was never more copiously illustrated than in the various phases of this rent-litigation. The party upon whom lay the burden of proof was almost certain to fail. To this evil the Tenancy Act was intended to afford a remedy. The principle of the Act may be said to be based upon a system of fixity of tenure at judicial rents: and its three main objects are, first, to give the settled *raiyat* the same security in his holding as he enjoyed under the old customary law; secondly, to ensure to the landlord a fair share of the increased value of the produce of the soil: and, thirdly, to lay down rules by which all disputed questions between landlord and tenant can be reduced to simple issues, and decided upon equitable principles. A good example of the first will be found in the clause which throws upon the landlord the onus of disproving the *raiyat's* claim to a right of occupancy; the second is illustrated by the section relating to price-lists, which relieves the *zamindar* of the trouble of showing that the value of the produce has increased; the third pervades the whole of the Act, and is especially conspicuous in the valuable section which authorizes an application to determine the incidents of a tenancy, and in the chapter which relates to records-of-right and settlements of rents. The maintenance of the principles of the Act is further safeguarded by a section which restricts the power of entering into contracts in contravention of its fundamental provisions.

In pursuance of these main principles, the Act lays down rules to guide the Courts in determining whether a tenant is a tenure-holder or a *raiyat*; it provides a procedure for the registration of the transfer of tenures; it defines the position of *raiyats* who hold at fixed rates of rent; it simplifies and facilitates suits for the enhancement or reduction of rent; it establishes a system for the commutation of rents payable in kind; it specifies the grounds on which a non-occupancy *raiyat* may be ejected; it prescribes rules for instalments, receipts, and interest upon arrears; it encourages the making of improvements; it restricts sub-letting; it provides for cases in which holdings are surrendered or abandoned; it protects the interests, both of the parties and of the general public, in cases of disputes between co-sharers; it lays down a procedure for recording the private lands of proprietors; it introduces a new system of distraint; and it gives protection to sub-tenants when the interest of the superior holder is relinquished or sold in execution of a decree.

Principal changes made by the Bengal Tenancy Act in the previous law.

34. The principal changes made by the Bengal Tenancy Act in the previous law were as follows[1]:—

[1] Bengal Administration Report, 1892-93, pp. 92, 93.

(1) A *raiyat* becomes a "settled *raiyat*," and acquires rights of occupancy in all the lands he holds in a village, provided he has held any land for twelve years in the same village. It is not now necessary that he should have held the same particular land, or that he should have held all the land for twelve years, as was the case before. If he has held any land for twelve years in a village, he acquires occupancy-rights in all the land he holds, or may in the future hold, in that village.

(2) In any proceeding between a *raiyat* and his landlord, it is to be presumed that the *raiyat* is a "settled *raiyat*" until the contrary is proved or admitted.

(3) The grounds on which a settled *raiyat's* rent may be enhanced have been modified, and the enhancement of his rent by suit has certainly been facilitated; but, on the other hand, the enhancement of his rent by contract has been restricted, and now there are few important rights conferred on him by this Act out of which a *raiyat* is competent to contract himself.

(4) All notices of enhancement have been abolished by this Act owing to the difficulty experienced in drawing them up in accordance with the provisions of the former law, as well as of proving their service. The institution of the enhancement-suit is now all the notice of enhancement required to be given to the tenant.

(5) If an occupancy-*raiyat's* rent has once been enhanced by contract or suit, no suit for the further enhancement of his rent will lie until after the expiry of fifteen years [except on the ground of a landlord's improvement].

(6) An occupancy *raiyat* or his landlord is empowered to apply for commutation of rent payable in kind to a money-rent.

(7) A non-occupancy *raiyat* can now be ejected at the will of his lord only if he has been admitted to the occupation of the land under a registered lease, and after the service on him of a six months' notice to quit, and within six months of the expiration of the term of his lease.

(8) A non-occupancy *raiyat*, who objects to pay an enhanced rent, can now have his rent fixed by the Court. If the *raiyat* refuses to pay the rent so fixed, he can be ejected. But, if he agrees to pay it, he is entitled to remain in occupation of the land at that rent for five years.

(9) A landlord is now bound to retain the counterfoil of every receipt he gives to a tenant, which receipt has to contain certain specified particulars; and every tenant is now entitled, at the end of each year, to a receipt in full or a statement of account up to the close of the year. Further, a receipt which does not contain substantially the particulars required by law will be presumed to be a receipt in full up to date.

(10) Provision has been made for tenants making improvements in their holdings, and for their recovering compensation for them in the event of eviction. A system of registering improvements, whether made by the tenant or the landlord, has also now been introduced.

(11) Power has now been given to a landlord, with the sanction of the Collector, to acquire the land of any of his tenants' holdings for a reasonable and sufficient purpose having relation to the good of the holding or estate, including the use of the land for building, religious, educational, or charitable purposes.

(12) No tenant can now be ejected except in execution of a decree.

(13) Provision has been made for the appointment of common managers in the case of disputes arising between the co-owners of estates.

(14) Act VIII. (B. C.) of 1879, the Act under which all settlements of Government and other estates have hitherto been made by Government, is repealed by this Act. . . . As regards the record of the rights and the fixing of the rents of tenants of lands under settlement, such settlements will have ordinarily to be made under the provisions of this Act.

(15) In Chapter X. provision is made empowering the Local Government, with the previous sanction of the Governor-General in Council, to order that a survey and record-of-rights be prepared in respect of the lands in any local area by a revenue-officer; and, when any such records-of-rights and settlement of rent is proceeding in any local area, the ordinary Civil Courts are precluded from entertaining any suit for the alteration of the rent or the determination of the status of any tenant.

(16) Power is given to the Local Government, on its own motion, or on the application of a proprietor or of a tenant, to survey and define a proprietor's private or demesne land. ..... Restriction has also been placed on the conversion of ordinary *raiyati* land into *khamar* land, so as to prevent a proprietor, in future, from putting obstacles in the way of the acquisition of occupancy-rights by his tenants.

(17) The landlord's power of distraint has been curtailed. A landlord can now only distrain through the Civil Court; and, notwithstanding the distraint, the tenant is entitled to reap, gather, and store the produce, and do anything necessary for its preservation.

(18) A landlord can no longer harass his tenant by instituting successive suits for arrears of rent against him. Three months must elapse between each successive rent-suit.

(19) A decree for arrears of rent can no longer be executed by any one who has not acquired the landlord's interest in the land; but, on the other hand, the holder of a decree for arrears of rent is no longer subject to any restrictions in the execution of his decree. He is not now bound to proceed in the first instance against the moveable property and person of his judgment-debtor, then against the tenure or holding itself on which the arrears have accrued, and, finally, against the other immoveable property of the tenant, but is at liberty to execute his decree in any way that is lawful under the Civil Procedure Code; while the tenant's tenure or holding is hypothecated for the rent, and no transfer of it is valid while the arrears of rent which have accrued on it remain unsatisfied.

(20) The disabilities of minority and lunacy do not now apply to rent-suits.

35. The chief amendment made in the Act of 1885 was made by Bengal Act III. of 1898, the provisions, reasons, and objects of which are described in the notes to Chapter X. of this work. **Bengal Act III. of 1898.**

M. F.

April 1904. A. A.

[Notes by Editor.]

The Introduction to the First Edition has been left untouched. Since it was written, Bengal Act I. of 1907 and E. B. & Assam Act I. of 1908 have been passed mainly with the object of improving the Act in details. The only serious innovation is the introduction of provisions to enable landlords to recover their rents by a summary procedure (Chapter XIII—A). As however this summary procedure cannot be put into force except when the Records of Rights prepared under Chapter X. of this Act are maintained, and, as no systematic attempt to maintain the Records of Rights hitherto prepared has been made, Chapter XIII.A is for the present practically a dead letter.

An anonymous writer criticized these new provisions of the Act in the *Calcutta Review* (April 1908). The article in question is reproduced here (by permission) :—

A RETROSPECT AND A WARNING—1885-1908.

SOMETHING over twenty years ago, there appeared in the pages of this *Review* an article[1] dealing with the Bengal Tenancy Act then recently added to the Statute Book. We do not now propose to enter on a general survey of the working of that Act, nor to enquire how far it has succeeded in securing to the vast body of raiyats of this Province the rights which it was meant to safeguard. In 1898 various amendments were made in the Act, more especially with a view to facilitating the preparation of Records of Rights. The work of preparing these Records has been in progress continually since 1892-93, and, up to the present, they have been completed for all the districts of this Province (as at present constituted) north of the Ganges, for a large part of the Chota Nagpore Division, and for various small areas in every division and district.

The urgent need for the preparation of a systematic Record of Rights was insisted upon as far back as 1819 or 1820. Some seventy years later, it began. Various landlords objected, as they knew that their hidden doings were certain to be brought to light, but luckily wiser counsels prevailed, and the work went on uninterruptedly for about eleven years.

In 1904, at Bhagalpur, a body of local zemindars approached Sir ANDREW FRASER with a petition traversing the methods of the officers of the Settlement Department, and serving up the old stock arguments against any attempt at relief being made in the interests of their tenants. In particular they objected to the action of officers of the Settlement Department who ruthlessly pruned away enhancements illegally exacted from the raiyats since the passing of the Tenancy Act. They argued that, because a rent has beeu successfully extorted for three years, it becomes, *ipso facto*, the rent payable, *i. e.*, legally payable, and that the Settlement Officer had no discretion to go behind the rent actually paid during the preceding three years, or to examine if the stringent provisions of section 29 of the Act had been disregarded.

We understand that, in another district, an eminent native notable had succeeded in extorting, immediately after the conclusion of the settlement-operations, agreements to pay unlawfully enhanced rents from numbers of his tenants. Evidently he and his fellow-landowners in Bhagalpur considered that, as the Law of 1885 had for so long been a dead letter, it should continue to be so if they could manage to annul its provisions in practice. And no doubt they relied on the disinclination of Civil Courts to enforce laws in restraint of "free" contract (save the mark!), especially when the "free" contract is between a raiyat and the zemindar of a thousand square miles, backed by the moral influence of a legion of peons with thick *lathis* and scarlet *pagris*. Their view clearly was,

[1] By Sir H. RISLEY.

that the "fair" rent for a holding is the utmost they can squeeze out of the tenant, and they proved themselves to be past masters in the gentle art of enhancing rents by fictitious re-measurements, unjustifiable re-classification, and a multitude of more tortuous methods. All their arguments were practically a rehashed version of those brought forward in 1892 when the Settlement and Survey Operations were begun in Behar, and one would have thought that a reference to the masterly disposal of them in Sir A. P. Macdonell's Minute of 1893 (September) would have sufficed for their disposal.

But apparently the Bengal Government thought that "something must be done," and a draft Amendment Bill to the Tenancy Act was circulated in the cold weather of 1904-05. Its salient feature was an admission (by implication) that section 29 of the Bengal Tenancy Act was obscure in meaning, and the proposed remedy was a childish attempt at deciding "when is a legal presumption not a presumption." A new section 29 was proposed that annulled, as far as it could, the well-considered conclusions of the Rent Law Commission and the framers of the Act of 1885. But, luckily, the absurdity of the new proposal was so patent that it was obvious to everyone except its sponsors, and it died a natural death under a storm of adverse criticism from all the officers who had a practical knowledge of the working of the Tenancy Act. Its disappearance was accelerated by an authoritative decision of the Calcutta High Court [1] to the effect that section 29 really means what it conveys in plain English; and that the Behar Settlement Department was absolutely correct in its interpretation and application of the section. Subsequently, committees were appointed to consider the need for specific amendments of the Tenancy Act on certain limited points. As a result of their deliberations, this Amending Act of 1907 has been passed. It purports to have been framed in the interests of the tenants, but a very close examination yields but little that is likely to benefit the tenants, and it discloses much that may easily react to their great and unforeseen disadvantage.

The most striking novelty in this Amending Act is based on the acceptance of the assertion that the existing method of procedure in Rent Suits is unduly protracted, and a summary method is introduced. This summary method is not to be availed of except by chosen zemindars whose accounts are correctly kept, and who are recommended by the local officers as fit and proper persons to be allowed to avail themselves of this summary procedure. The new procedure is briefly a short cut to the issue of a decree for the amount claimed. It is admittedly based on the method adopted by Government and known as the Certificate Procedure, which is largely used to recover cesses for roads and public works, and rents in khas mahals and in wards' estates. But there is underneath a false assumption. The accounts in the Government Offices are kept as accurately and as honestly as possible. Those who keep them have no personal interest in falsifying them, or in making demands that are not due. The landlords' agency for keeping accounts is hopelessly corrupt, and they have every incentive to making false statements of arrears. Even a *bonâ-fide* error would be productive of unnecessary worry to the unlucky tenant; and a tardy admission that there was an error would not compensate the *raiyat* for the harassment to which he had been exposed.

We are not favoured with any statement of the reasons that have satisfied the Bengal Government that a summary procedure for the recovery of rents is required in Bengal. The enormous benefits of the Permanent Settlement are all clear profit almost, to the Zemindars. If proprietors in temporarily-settled areas pleaded for an accelerated method of realizing their arrears of rent, they would have a much better case than have these Bengal zemindars whose revenue-demand is frequently not more than a thirtieth or a fortieth part of their rent-roll. Again, it may be said that fully 80 per cent. of rent-suits are uncontested. Yes,

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[1] 32 Calcutta 395—*Bipin Bihari Mondol* vs. *Krishnadhon Gose.*

but the average time required for the disposal of uncontested rent-suits is only about 10 or 11 weeks. The proposed Certificate Procedure will not materially abridge that. The balance of contested cases will drag on in either Court, whether the deciding officer is a Revenue Officer or a Munsiff.

But a greater objection by far is the proposal that puts on the tenant the onus of proving that he has *not* paid up his rent. We are not aware of any country where the debtor has not to prove his claim. The Bengal Zemindars are apparently so sorely in need of protection that a benevolent Government says "You need only make a claim, and the tenant is straightway called on to disprove your claim." We need not enlarge on the utter absurdity of asking anyone to prove a negative—most of all a wretched raiyat, illiterate and defenceless against the unlimited resources of a relentless zemindar or tahsildar. It is true that he can appeal to the Civil Court if he has been wrongly dispossessed of his holding, and sold up by this beneficent summary procedure. Surely the Bengal Government is aware that to tell a tenant that his remedy lies in a civil suit is equivalent, in the major ty of cases, to telling him that he has no remedy at all; and where is a tenant who has lost his holding (by being sold up) to find funds for filing a formal suit? His only hope of raising money is a mortgage on his land; and neither mahajan nor village bank will lend a homeless, landless outcast anything.

We need not enlarge on the many familiar devices that are practicable (and are practised all too often) to suppress all knowledge of the pending proceedings till the holding is brought to sale. We commend to the notice of those who have framed these proposals for summary rent-suits the accumulated views of their predecessors as to the effect of summary methods for recovering rents since the days of the "*Pancham*" and "*Haftam*" (of evil memory) downwards A good and just landlord has no trouble in realizing his lawful demands. The others (we hope they are not the majority) need no assistance from Government.

We notice that this summary procedure is only to be used where a Record of Rights has been prepared and is subject to periodical revision As far as we are aware, no steps have as yet been taken to keep up to date the Record of Rights in Behar. In the United Provinces grave difficulties have been experienced in revisional work; and the difficulties are not likely to be less in densely-populated districts like Saran and Muzaffarpur. Recent experiments in Balasore have revealed them.

Again, co sharer landlords are now enabled to sue separately for their rents when these have been apportioned. We recognize that it was a troublesome thing sometimes for them to sue for rent; but it was always open to apply for the appointment of a common manager. Now it is the tenant who must suffer because of quarrels among his landlords. We recommend all tenants to deposit their rents in Court rather than expose themselves to a succession of rent-suits for purposes of harassment.

The question also arises, what officers are available to try these "summary" rent-suits? It is not contemplated to leave them to Munsiffs and the Civil Courts. This is an abandonment of the position deliberately taken up about 1868, when rent suits were handed over to the Civil Courts. We imagine that the present revenue-authorities will say that they have quite work enough on hand. In Saran there are usually over 11 000 certificate-cases dealt with annually for the recovery of cesses; what the number may rise to if summary rent-suits are added is difficult to estimate.

We have nothing but praise for the sections in this Amendment Act that impose a duty on Civil Courts to consult the duly-framed Record of Rights, especially with regard to the rent payable; and that provide for the framing of a Record of Rights in certain cases on the application of a proportion of the tenants,

Other sections that tend to diminish litigation, when, under the previous law, the effect of decided cases was to foment litigation, are well conceived, and should have a beneficial result But we regard with apprehension this new summary procedure, as it can easily be made an engine of oppression: and we look in vain in the former and recent histories of landlordism in Bengal for any adequate justification for its introduction. We hope to examine its operation when it is actually put in force (if ever), and we should be very pleased to find that our apprehensions have been unfounded.

THE

BENGAL TENANCY ACT

(ACT VIII. OF 1885)

As amended up to date, including the Alterations embodied in Bengal Act I. 1907 and in E. B. & Assam Act I. of 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the Assent of the Governor-General on the 14th March 1885.)

An Act to amend and consolidate certain Enactments relating to the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Bengal Tenancy Act, 1885. Short title.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Commencement.

Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.

Local extent.

(3) It shall extend, by its own operation, to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal except the Town of Calcutta, [any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884,[1] or part thereof, and specified in a notification in this behalf by the Local Government,] the Division of Orissa, and the Scheduled Districts specified in the Third Part of the First Schedule of the Scheduled Districts Act, 1874, and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

Added by Ben. Act I. 1907 and E. B. Assam Act I. 1908.*

Act XIV., 1874.

[*Explanation.*—The words 'the town of Calcutta' mean, subject to the exclusion or inclusion of any local area by notification under section 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I. to that Act.]

Ben. Act I. 1907 only.

Ben. Act III., 1899.

THE BENGAL TENANCY ACT IS NOT A COMPLETE CODE OF THE LAW OF LANDLORD AND TENANT IN BENGAL.

The Bengal Tenancy Act not a complete Code.

The Bengal Tenancy Act is not in force in all the territories administered by the Lieutenant-Governor of Bengal; and, even where it is in force, it is not a complete Code of the statute-law of landlord and tenant, for there are various special and

[1] Act III. of 1884.

* Amendments and modifications introduced by Bengal Act I. of 1907 and E. B. Assam Act I. of 1908 are indicated by square brackets and marginal notes.

local enactments which form part of that law,[1] the chief of which are indicated later on.

In territories in which the Bengal Tenancy Act is not in force, other enactments indicated later on regulate the relations of landlord and tenant.

A considerable branch of law on the subject of landlord and tenant is also to be found in the Law Reports, all important cases in which are mentioned in the following pages.

A full digest of the statute-law and case-law of landlord and tenant in Bengal, as it stood in the year 1879, was compiled by Mr. Field in that year, but there is no such digest of more recent date.

TERRITORIES IN WHICH THE BENGAL TENANCY ACT OR PART OF IT IS IN FORCE.

Places where the Act is in force.

The Bengal Tenancy Act (except section 31A) is now in force in the Regulation Districts of Bengal and Bihar, and in the Scheduled District of Jalpaiguri; portions of it are in force in the Orissa Division; and sections 56, 58 (*1*) and (*3*), and 84 are in force in the Sonthal Parganas. It is not in force in Angul or Sambalpur.

Commencement of Act.

The Act was brought into force in the Regulation Districts of Bengal and Bihar on the 1st November 1885 by a notification dated the 4th September 1885 published in the *Calcutta Gazette* of the 9th *idem*, Part I., page 874. That notification was, however, modified, as to the commencement of sections 61 to 64 and Chapter XII., by Act XX. of 1885, which enacted that these portions of the Act should come into force on such date, not later than the 1st day of February 1886, as the Local Government might appoint, or, if no such date was appointed, then on the 1st February 1886. No such date was appointed, and accor-

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1. Rent Commission's Report, page 7; Sir Courtenay Ilbert's speech when introducing the Bengal Tenancy Bill—*see* Selections, p. 53.

dingly sections 61 to 64 and Chapter XII. of the Act came into force, in the Regulation Districts of Bengal and Bihar, on the 1st February 1886. Act XX. of 1885 has been repealed by the Repealing and Amending Act, XII. of 1891, as being spent.

The Amending Act, Bengal Act III. of 1898, came into force on the 2nd November 1898—*see* its first section and the *Calcutta Gazette* of that date, Part III., page 19.

The subsequent Amending Acts—Bengal Act I. of 1907 was published in the *Calcutta Gazette* of May 22, 1907; and E. B. & Assam Act I. of 1908 was published in the *E. B. & A. Gazette* of June 10, 1908.

The notifications which brought the Bengal Tenancy Act into force in the Regulation Districts and Jalpaiguri, and those which brought parts of it into force in Orissa and the Sonthal Parganas, are re-printed in Appendix I. to this work. A note is added to each section that has been extended to Orissa.

Special and ocal laws.

Special and local laws are expressly saved by section 195 of the Bengal Tenancy Act. Clauses (*a*) to (*e*) of that section save in general terms laws on the subjects mentioned in column 1 of the following table. In column 2 of that table the principal enactments dealing with those subjects have been specified:—

1	2
SUBJECT.	LAWS.
(*a*) Powers and duties of Settlement Officers.	Regulation II. of 1793. " VIII. of 1793. " VII. of 1822. " IX. of 1825. " IX. of 1833. (Special provisions as to settlements are contained in Chapter X. of the Bengal Tenancy Act, but they do not supersede the unrepealed portions of these Regulations.)

1	2
SUBJECT.	LAWS.
(*b*) Procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards, or of the Revenue Authorities.	Bengal Act VII. of 1880—since repealed and re-enacted by Bengal Act I. of 1895 (the Public Demands Recovery Act, 1895), which has been amended by Bengal Act I. of 1897.—*See* section 7, clauses (*g*) and (*h*), of the latter Act.
(*c*) Avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue.	Act XI. of 1859, sections 37, 52. Bengal Act VII. of 1868, section 12.
(*d*) Partition of revenue-paying estates.	Bengal Act VIII. of 1876—since repealed and re-enacted by Bengal Act V. of 1897.—*See*, especially, section 81 of the latter Act.
(*e*) *Patni* tenures.	Regulation VIII. of 1819. Regulation I. of 1820. Act XXV. of 1850. Act VI. of 1853. Bengal Act VIII. of 1865.

Clause (*f*) of section 195 of the Bengal Tenancy Act saves all other special and local laws which are not repealed, either "expressly or by necessary implication, by this Act." A table showing the principal extant enactments regulating agricultural tenancies in Bengal, which have not been expressly repealed by the Bengal Tenancy Act, and showing also the principal extant enactments on the same subject which have been passed since that Act, will be found in Appendix II. to this work.

Jalpaiguri.

Tenancy Law formerly in force in Jalpaiguri.

The district of Jalpaiguri is divided by the river Tista into two portions, which are different in character. The tract on the west of the river was formerly part of the Rangpur district; it is permanently settled and is typical of Lower Bengal generally.

That on the east, known as the Bhutan or Western Duars, was annexed from Bhutan in 1866.

Most of the land now cultivated in the Western Duars has been reclaimed from jungle, and is held from Government by tea-planters and others on terms defined in their leases.

To the former area, Act X. of 1859, with its supplementary Act, Bengal Act VI. of 1862, was extended in due course, and later Acts relating to the relations of landlord and tenant were not at first made applicable to it, only because the tract had been united with the Duars to constitute a Non-Regulation District.

In the latter tract (the Bhutan Duars), Act XVI. of 1869 was in force till 1895. Under that Act the jurisdiction of the ordinary Civil Courts was withdrawn in respect of all matters affecting immoveable property, revenue, and rent, such matters being disposed of by such officers as the Lieutenant-Governor appointed for the purpose, namely, the Deputy Commissioner and his subordinates. Act XVI. of 1869 was repealed by Bengal Act VII. of 1895, and, by a notification dated 25th October 1895, Act X. of 1859, with its supplementary Act, Bengal Act VI. of 1862, was extended to the Bhutan or Western Duars.

Act X. of 1859 (with Bengal Act VI. of 1862) was therefore the rent-law applicable to the whole of the Jalpaiguri District from 1895 to 1898.

The Bengal Tenancy Act in force in the whole of Jalpaiguri except Western Duars.

By a notification, No. 963 T. R., dated 5th November 1898,[1] the Bengal Tenancy Act, with modifications that are merely verbal, was extended to the whole district except the Bhutan or Western Duars, with effect from the 1st January 1899, while, by a notification of the same date, No. 964 T. R.,[1] the Bengal Tenancy Act was extended to the Western Duars, with some important restrictions and modifications. These notifications

[1] Printed in Appendix I., *post*.

repealed Act X. of 1859 throughout the district, so that the whole of the Bengal Tenancy Act is now in force in the whole district except the Western Duars.

Modifications of the Act in the Western Duars.

The restrictions and modifications with which the Bengal Tenancy Act was extended to the Western Duars are—

First, to bar the application of the Act to lands granted or leased, or that may in future be granted or leased, by Government to any person or Company, under an instrument in writing, for cultivation of tea, or for the reclamation of land under the Waste Land Rules. The provisions of the Bengal Tenancy Act do not apply to such lands. The terms of the leases granted to tea-planters, and to holders of waste lands under the Waste Land Rules, regulate the relations of the lessee and the Government, and any litigation there may be regarding such lands is to be governed by the Code of Civil Procedure (which was extended to Jalpaiguri by Bengal Government Notification dated 1st June 1882), by the Transfer of Property Act, and by other laws applicable to the district. As neither Act X. of 1859 nor the Bengal Tenancy Act applies to lands leased to tea-planters in the Western Duars for cultivation of tea, or to lands leased in Jalpaiguri under the Waste Land Rules, it follows that occupancy-rights cannot be acquired in such lands except by contract. The tenants of tea-planters in the tea gardens of the Western Duars are mere squatters or coolies, and it was intended by the notification extending the Act to the Western Duars to debar them from the acquisition of occupancy-rights by mere length of occupation.

Bar to acquisition of occupancy-rights in the Western Duars.

Rights and obligations of Jotdars in Western Duars governed by Settlement-records and leases.

Second, there are certain tenants in the Western Duars (described in Appendix IV. to this work), known as *jotdars, chakanidars, dar-chakanidars,* and *adhiars,* whose rights and obligations have been defined in Settlement-records lately prepared and approved by Government, or in their leases. Where there is anything in the Bengal Tenancy Act inconsistent with the rights or obligations of these tenants as defined in the Settle-

ment-records or in their leases, their rights and obligations, as defined in the Settlement-records or leases, are enforceable notwithstanding anything to the contrary in the Bengal Tenancy Act.

Rent-suits in the Jalpaiguri district now tried by Munsiffs.

The trial of rent-suits in Jalpaiguri was transferred to the Munsiffs' Courts by the extension of the Bengal Tenancy Act to the district.

Orissa.

Tenancy Law in force in Orissa.

By a series of notifications, dated between the 10th September 1891 and the 5th November 1898, which are printed in Appendix I., *post*, sections 3 to 5, 7, 19 to 49, 52 to 75, 80, 101 to 115 (Chapter X.), and 189 to 192 of the Bengal Tenancy Act have been extended to the Division of Orissa.

In 1906 Chapter XI. was extended to Orissa, also sections 93 to 100 and Chapter XIV. After the passing of Bengal Act I. of 1907, the sections of that Act amending or supplementing provisions already extended to Orissa were extended to this Division with the permission of the Governor-General in Council. Moreover, the operation of sections 147A, 147B, 158A, and 158B was extended to Orissa. The last notification making these extensions is that dated 22nd February 1908—No. 1142 L. R.

It is extremely difficult to say which of two similar provisions in Act X. of 1859 and in this Act is in force in Orissa, and if some provisions of Act X. (*e. g.*, section 13, requiring notices of enhancement), analogous to which there is nothing in this Act, are still in force, in view of section 2 (*2*), *post*.[1]

The main provisions of the Act which have not been extended to Orissa are those relating to judicial procedure.

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[1] Mr. S. L. Maddox, I. C. S., has just completed special enquiries with a view to removing these uncertainties in the law, and has submitted a draft Code for consolidating the Law of Landlord and Tenant in the districts of Cuttack, Puri, and Balasore. This report is at present under consideration.

These provisions were not extended, because it was thought desirable to leave the trial of rent-suits in the hands of Deputy Collectors as hitherto under Act X. of 1859.

Banki was formerly a scheduled district, but was annexed to the Cuttack district by Act XXV. of 1881. The same rent-law, therefore, is in force in Banki as in Cuttack.

The effect of section 2 (*2*), *post*, is, that so much of Act X. of 1859 and Bengal Acts VI. of 1862 and IV. of 1867 as is not inconsistent with the portions of the Bengal Tenancy Act which have been extended to the Orissa Division remains in force there.

The Sonthal Parganas.

Tenancy Law in force in the Sonthal Parganas.

These territories are described in the Schedule to Act X. of 1859, and in a notification, No. 478, dated the 12th March 1872, published in the *Gazette of India*, 1872, Part I., page 240.

The sections of the Bengal Tenancy Act in force in them are sections 56, 58 (*1*) and (*3*), and 84.

Section 84 was declared in force by Notification No. 771 dated the 20th February 1897, published in the *Calcutta Gazette* of the 24th *idem*, Part I., page 281, and is now included in the Schedule of Laws in force in the Sonthal Parganas, which is appended to Regulation III. of 1899. Sections 56 and 58 (*1*) and (*3*) are declared in force by Notification No. 1338 dated March 1, 1904, published at page 347 of the *Calcutta Gazette* of March 2, 1904.

The Sonthal Parganas are administered under a series of special enactments, namely, Act XXXVII. of 1855 and Regulations III. of 1872, III. of 1886, V. of 1893, III. of 1899, and III. of 1900.

By Notification dated the 9th December 1879, published in the *Calcutta Gazette* of the 10th *idem*, Part I., page 1221, certain lands in the Sonthal Parganas were exempted from settlement under Regulation III. of 1872; and the provisions as to land-

lord and tenant contained in that Regulation consequently have no effect in those lands.

A number of the enactments shown in Appendix II. to this work have been declared, by Regulation III. of 1899, to be in force in the Sonthal Parganas.

TERRITORIES IN WHICH NO PART OF THE BENGAL TENANCY ACT IS IN FORCE.

Places where the Bengal Tenancy Act is not in force.

The only territories in Bengal in which no part of the Bengal Tenancy Act is in force are—

(1) the town of Calcutta,

(2) the Scheduled District of Darjiling,

(3) the Scheduled Districts of Hazaribagh, Ranchi, Palamau, Manbhum, and Singbhum in the Chota Nagpur Division,

(4) the De-regulationized Districts of Angul and the Chittagong Hill-tracts, and

(5) the District of Sambalpur (added to Bengal from October 16, 1905).[1]

Calcutta.

Tenancy Law in force in Calcutta.

The expression "the town of Calcutta," as used in section 1 of the Bengal Tenancy Act, now includes the areas described in Schedule I. of Act III., 1899, as modified by notifications under section 637 of that Act.

In the town of Calcutta proper, the relations between private landlords and their tenants are governed by the ordinary law of contract, or, in the case of Muhammadans and Hindus,

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1 *See* Notification No. 2832, September 1, 1905, published in the *Gazette of India* of September 2, 1905, p. 536, Part I., constituting the Province of Eastern Bengal and Assam.

by their respective laws and usages, or, if one of the parties is a Muhammadan or Hindu, by the laws and usages of the defendant.[1]

Ground rent or revenue due to the Government in respect of land situated in Calcutta is realized by a very summary process under Act XXIII. of 1850.

Darjiling.

Tenancy Law in force in Darjiling.

In Darjiling, the principal tenancy laws in force are Act X. of 1859 and Bengal Acts VI. of 1862 and IV. of 1867. Several of the enactments mentioned in Appendix II. to this work are also in force there.

Chota Nagpur Division.

Tenancy Law in force in the Chota Nagpur Division.

A special tenancy law, namely, Bengal Act VI. of 1908, is now applicable to the whole of the Chota Nagpur Division except Manbhum. The sections of that Act relating to Survey and the preparation of Records of Rights have been extended[2] to Parganas Barrabhum and Patkuri only. The extension of the whole of that Act to the whole of Manbhum is under consideration.

In the Manbhum District excepting the Parganas just named, the principal tenancy laws now in force are, as in Darjiling, Act X. of 1859 and Bengal Acts VI. of 1862 and IV. of 1867.

Angul.

Tenancy Law in force in Angul.

There is no special tenancy law in Angul. But section 55 of Regulation I. of 1894 empowers the Collector to require any proprietor, farmer, rent-collector, or occupier of land to furnish information, accounts, and documents, and section 39 directs the *tahsildar* to exempt the holding of any *raiyat* from sale for

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[1] *See* 21 Geo. III., c. 70, s. 17, and *Jagat Mohini Dassi* v. *Dwarka Nath Bysack* [1882], I. L. R., 8 Cal. 582.

[2] *Vide Calcutta Gazette*, Decr. 23, 1908, pp. 2058-59.—Notification No. 5335.

realisation of sums due to the Government unless and until the *tahsildar* has satisfied himself that the said *raiyat* has no other property by the sale of which the sum due from him can be realized.

Some of the enactments mentioned in Appendix II. to this work have been declared in force in Angul by Regulation I. of 1894.

Chittagong Hill-tracts.

Tenancy Law in force in the Chittagong Hill-tracts.

In the Chittagong Hill-tracts, there is no special Tenancy Act or Regulation, but section 18 of Regulation I. of 1900 empowers the Local Government to make rules to regulate or restrict the transfer of land, to provide for the collection of rents, to prohibit, restrict, or regulate the emigration of cultivating *raiyats* from one circle to another, and to regulate the procedure of officers. For rules made under this section, *see* the *Calcutta Gazette*, 1900, Part I., p. 429.

Assam.

Tenancy Law of Assam.

Neither this Act nor Act X. of 1859 is in force in the Assam Valley Districts. Bengal Act VIII. of 1869 is in force in Sylhet and Goalpara. It is hard to say that any special rent-law is in force elsewhere in Assam.

Repeal.

2. (*1*) The enactments specified in Schedule I. hereto annexed are repealed in the territories to which this Act extends by its own operation.

(*2*) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act, or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter, or thing not in force or existing at the commencement of this Act.

Sub-section (*1*).

The sections of the Regulations mentioned in Schedule I., which are repealed by this section, relate principally (1) to the imposition of *abwabs* or exactions and penalties for such exactions, and were repealed because suitable provisions regarding such exactions and penalties for them are contained in this Act; (2) to rules for adjusting instalments of rent, for which new rules are contained in this Act; (3) to the interchange, between landlords and tenants, of *pattas* and *kabuliyats*, which are no longer required to be interchanged under this Act; (4) to the appointment of joint managers, for which special provision is made by this Act; and (5) to the liability of a tenant to increase of rent for land gained by gradual accession from the recess of a river or the sea, for which provision is also made in this Act.

Certain Acts of the India and Bengal Councils, mentioned in latter part of the Schedule, are wholly repealed as containing the previous rent-law, for which the Bengal Tenancy Act is substituted; and Bengal Act VIII. of 1879, relating to the powers of Settlement Officers, was repealed, because Chapter X. of this Act is substituted for it wherever that Chapter is in force.

Sub-section (*2*): Orissa.

As to the extension of the Bengal Tenancy Act to Orissa, see note to section 1 above, and section 3 (*12*), *post*.

The "Division of Orissa," mentioned in sub-section (*2*), is the area under the charge of the Commissioner of Orissa (except Sambalpur district, which was added to that Division in October 1905, but is not governed either by Act X. of 1859 or any other Bengal Land Act), and is not the same area as the "Orissa" men-

tioned in section 3, sub-section (*12*).—See notes to that sub-section, *post*.

Sub-section

The principle of sub-section (*4*) is laid down also in the General Clauses Act (X. of 1897), section 6, which declares that, unless a different intention appears, a repeal shall not "revive anything not in force or existing at the time at which the repeal takes effect." *Cf.* also section 7 (*1*) of that Act, which declares that "it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state such purpose."

As an example, it may be mentioned that the repeal of Act X. of 1859 or the repeal of Bengal Act VIII. of 1869 does not revive the right of *zamindars* to compel the attendance of their tenants for adjustment of their rents or other purposes, which right was not in force or existing at the commencement of the Bengal Tenancy Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context—

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained, under the law for the time being in force, by the Collector of a district; and includes Government khas mahals and revenue-free lands not entered in any register.

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(*3*) "Tenant" means a person who holds land under another person, and is, or, but for a special contract, would be, liable to pay rent for that land to that person.

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

(*5*) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII., [Chapter XIV.,] and Schedule III. of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent. Bengal Act I., 1907; E. B. Assam Act I., 1908.

(*6*) "Pay," "payable," and "payment," used with reference to rent, include "deliver," "deliverable," and "delivery."

(*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(*8*) "Permanent tenure" means a tenure which is heritable, and which is not held for a limited time.

(*9*) "Holding" means a parcel or parcels of land held by a raiyat, and forming the subject of a separate tenancy.

[(*10*) "Village" means the area defined, surveyed, and recorded as a distinct and separate village in— Bengal Act I., 1907.

(*a*) the general land-revenue survey which has been made of the Province of Bengal, or

(*b*) any survey made by the Government which may be adopted by notification in the *Calcutta Gazette*, as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under

the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.]

E. B. & Assam Act I., 1908.

[(*10*) "Village" means the area defined, surveyed, and recorded as a distinct and separate village in—

(*a*) the general land-revenue survey of the districts which heretofore formed part of the Province of Bengal, or

(*b*) any survey made by the Government which may be adopted by notification in the *Eastern Bengal and Assam Gazette*, as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village:

Provided that, when an order has been made under section 101 directing that a survey be made, and a record-of-rights prepared, in respect of any local area, estate, tenure, or part thereof, the Government may, by notification in the *Eastern Bengal and Assam Gazette*, declare that, in such local area, estate, tenure, or part thereof, "village" shall mean the area which, for the purposes of such survey and record-of-rights, may be adopted by the Revenue-officer with the sanction of the Board of Revenue as the unit of survey and record.]

(*11*) "Agricultural year" means, where the Bengáli year prevails, the year commencing on the first day of *Bysak;* where the *Fasli* or *Amli* year prevails, the

year commencing on the first day of *Asin*; and, where any other year prevails for agricultural purposes, that year.

(*12*) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar, and Orissa made in the year 1793.

(*13*) "Succession" includes both intestate and testamentary succession.

(*14*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(*15*) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(*16*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(*17*) "Revenue-officer," in any provision of this Act, includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(*18*) "Registered" means registered under any Act for the time being in force for the registration of documents.

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector "Estate.

of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register.

Principle of the definitions of estate, tenure, and holding.

There are numerous definitions of the terms "estate," "tenure," and "under-tenure," in various Acts, which differ from those given in the Bengal Tenancy Act, and confusion has arisen from the indiscriminate use of these terms to signify the same and different things. The terms "tenure" and "holding" are sometimes confused with estate, under-tenure, and tenancy. The Bengal Rent Commission endeavoured to define these terms so as to give distinct ideas of what is really meant, and to avoid confusion arising from the indiscriminate use of them.[1] They are used throughout the Bengal Tenancy Act only in the sense in which they are defined in it.

"Estate" as defined in this Act.

Under the provisions of section 4 of the Land Registration Act (Bengal Act VII. of 1876), as amended by Bengal Act II. of 1906, the Collector of every district is bound to maintain registers of revenue-paying and revenue-free lands, which include, or ought to include, all revenue-paying and revenue-free lands in the district, all lands occupied for public purposes by the Government or public bodies, and all unassessed or waste lands.[2] An "estate" under the Bengal Tenancy Act means so much of any of these lands as is included under one entry in any of these registers. Every plot of land in a district is, or ought to be, included in some estate or other.

Estate "includes Government Khas Mahals."

The words "includes Government Khas Mahals" were inserted to make it quite clear that the substantive provisions of the Act apply to tenants on Government estates just as much as to those on ordinary *zamindari* estates. The only advantage, it has been said, that Government retained under the Bengal Tenancy Act over ordinary *zamindars* in its dealings with tenants on Government estates (*i. e.*, estates in which it collects rents from *raiyats* direct) was in the certificate procedure for realisation of

Powers retained by Government in estates managed by it, over and above the powers exercised ordinarily by zamindars.

[1] Rent Commission's Report, para. 10.
[2] Ss. 4 to 12, Bengal Act VII. of 1876.

rents;[1] but it also retained, under section 11 of Bengal Act VII. of 1868, as amended by Bengal Act II. of 1871 (the Revenue Sale Law), the power of bringing transferable tenures in its *khas* estates to summary sale for arrears of rent due to it. Under Bengal Act III. of 1898, amending Act VIII. of 1885, the method of settling rents now followed by Revenue Officers under Chapter X. in Government estates is also different from that prescribed for the settlement of rents by Revenue Officers under that Chapter in permanently-settled *zamindari* estates. The difference is described in the notes to Chapter X., *post.*

"Estate" includes Revenue-free lands not entered in any Register.

Though revenue-free lands ought generally to be entered in the Collector's general registers, it happens that they are not, in fact, always so entered. By section 13 of the Land Registration Act, VII. of 1876, the Board of Revenue are empowered to exempt revenue-free lands from registration in any district if it thinks the circumstances are such as to make their registration impracticable; and the Board have so exempted from registration revenue-free lands containing an area of less than 2 acres in Cuttack, Balasore, and Puri.[2]

It is provided in section 3 (*1*) of the Bengal Tenancy Act that revenue-free lands that are not in fact registered shall, for the purposes of this Act, be regarded as estates, because, in the absence of such provision, the owners of non-registered revenue-free lands would not be "proprietors" or "tenure-holders" within the meaning of clauses (*2*) and (*7*) of this section and section 5 (*1*), and their tenants would not be *raiyats* as defined in section 5 (*2*) and (*3*), and would be unable to acquire occupancy-rights under section 20.

"Proprietor."

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

Government Report, 1884, Vol. I., p. 3, para. 7.
Board's Circular Order of 2nd May 1900.

"Proprietor" includes the Government and local bodies.

"Proprietor" includes the Government.[1]

"Proprietor" also includes District Boards and other local bodies owning land in trust or for their own benefit. As the word "person" includes "any Company or Association or body of individuals, whether incorporated or not" [see the General Clauses Act (I. of 1868), section 3 (*3*)—since repealed and re-enacted in the General Clauses Act (X. of 1897), section 3 (*39*)], it includes District Boards and similar bodies. When such bodies own lands that are entered in their names in the Collector's registers under separate numbers as estates, they are "proprietors" as regards lands so entered. It sometimes happens, however, that lands occupied by District Boards are not entered under separate numbers in their names in the Collector's registers, but remain included in those registers in the parent estates through which District Boards' roads pass. As regards these latter lands, the owners of the parent estates are the "proprietors," and District Boards are their tenants, for they are, or, but for a special contract, would be, liable to pay rent to the proprietors for the occupation of the land—see clause (*3*) of this section. But it is questionable whether District Boards are tenure-holders of such lands, for the lands were not primarily let to them for the purpose of collecting rents or bringing the lands under cultivation [see section 5 (*1*), *post*]; and they are not *raiyats*, for they did not acquire the land for the purpose of cultivating it [see section 5 (*2*), *post*].

Description of proprietary right in temporarily settled estates.

In temporarily-settled estates, the Government can, in the exercise of its sovereign rights, fix the revenue at any amount it thinks fit on the expiration of the period of each settlement of revenue, though, in practice, it observes certain rules in determining the amount of its revenue-demand. The proprietor of a temporarily-settled estate has a right to re-settlement at the sum so fixed. If he is unwilling to accept settlement on the

[1] Sir Stewart Bayley's speech in moving that the Report of the Select Committee be taken into consideration.—*Selections*, p. 411.

terms offered by the Government, he is called upon to state the amount of revenue he is willing to pay, and an annual allowance of not less than 5, nor more than 10, *per cent.* on the sum he offers is made to him by the Government, or, in case he fails to make an offer, a similar allowance is made on the amount realized by the Government from the estate, which itself is, in that case, taken possession of by the Government, and managed directly (*khas*), or let in farm. This allowance is called *malikana* (from *malik*, proprietor), and is really an allowance made to proprietors out of possession. The essence of proprietary right in a temporarily-settled estate is the right of the owner to a renewal of settlement with him on the expiration of each periodic settlement, or, in case of his refusal to engage on the terms offered, the right to receive *malikana*[1] from the Government.

The Noabad talukdars of Chittagong are not "proprietors."

The *Noabad talukdars* of Chittagong never had, or claimed to have, a right to *malikana*, and, on the other hand, the Government had no right to fix the amount payable by them to it at any amount it thought fit. It has, therefore, been declared by the Government of India[2] that these *Noabad talukdars* are to be regarded, not as proprietors, but as tenure-holders, their rights and obligations being governed by the provisions of the Bengal Tenancy Act relating to tenures. Their rents can only be enhanced now in accordance with the provisions of this Act; they are not liable to have their tenures leased out to others or taken into *khas* possession by the Government for recusancy, as proprietors are; and they can only be ejected by an order of a Civil Court. But, on the other hand, they are not entitled to receive *malikana* from the Government, as proprietors of temporarily-settled estates are, should they refuse to accept the rents settled for them.[3]

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[1] *See* Field's Regulations, Introduction, para. 39, and Regulation VII. of 1822, s. 5, cls. 2 and 3.

[2] *See* Govt. of India's Letter 1792-173, dated 24th July 1893, cited in the Chittagong Settlement Report, page 117, para. 392

[3] *See* Appendix IV, *post*, for description of *Noabad* and other *talukdars*.

The tea-planters of Jalpaiguri and lessees of lands under the Waste Land Rules in Jalpaiguri, Saugor Island, and the Sunderbans are not "proprietors."

For similar reasons it would appear that tea-planters in Jalpaiguri, and lessees of waste lands, under the Arable Waste Land Rules, are not "proprietors." They are entitled to renewal of their leases on certain terms specified in the leases themselves, but, should they refuse to accept renewal on these terms, they are not, as a rule, entitled to *malikana*.

They are, ordinarily, tenure-holders whose rights and obligations are regulated by the provisions of the Bengal Tenancy Act, where it is in force, or by so much of the Act as is in force where the lands are situated, subject, however, to the conditions of their leases where the leases were given before the commencement of the Act, and to those conditions, so far as they are consistent with the provision of the Act, where the leases were given after the commencement of the Act (see sections 7 and 10 and 178 (*3*), provisos (i) and (ii), *post*).

When the tea-planters of Jalpaiguri and lessees under the Waste Land Rules do not come under the definition of "tenure-holder" in section 5 (*1*), *post*, they are *raiyats* under this Act.

In some cases lessees of waste lands in the Sunderbans under the old Waste Land Rules of 1853 claim that they are entitled to *malikana* should they refuse to engage, on the terms offered, on the expiration of their leases. Such lessees of waste lands in the Sunderbans as are, under the terms of their settlement, entitled to *malikana* (if there be any) are apparently "proprietors" under this Act.

Tenant.

(*3*) "Tenant" means a person who holds land under another person, and is, or, but for a special contract, would be, liable to pay rent for that land to that person.

Meaning of "land."

The Bengal Rent Commission remarked that certain parts of Act X. of 1859 and Bengal Act VIII. of 1869 had been construed to apply only to land used for agricultural or horticultural purposes or the like, and that the question, whether the remaining portions were limited in their application, was one which had never

been settled. They framed a definition of "land" with a view to make it clear that the provisions of the Bill drafted by them would be applicable to lands used for agricultural and horticultural purposes, and to tenures and under-tenures which included much more than land used for agricultural and horticultural purposes.[1]

That definition was not, however, incorporated in the Bengal Tenancy Bill as passed, and it was finally left to the Courts to decide to what lands or descriptions of land the provisions of the Act were to be applicable.[2]

Lands to which the Bengal Tenancy Act applies.

There can be no doubt that the Act applies to agricultural and horticultural land, and to pasture land which a tenant has a right to bring under cultivation, though he may use it for gathering produce or grazing cattle on it (see section 5 (*2*), *Explanation, post*).

Apparently it was not intended to exclude from the application of the Act any of the lands to which, according to the rulings of the Civil Courts, Act X. of 1859 applied; for it is expressly provided, in section 19, *post*, that every *raiyat* who, by the operation of any enactment, custom, or otherwise, had acquired a right of occupancy in any land before the commencement of the Bengal Tenancy Act, shall have a right of occupancy in the land under that Act. It seems to follow that the Act is applicable to all lands to which Act X. of 1859 and Bengal Act VIII. of 1869 were held by the Courts to be applicable, and possibly it may apply in addition to other lands to which these Acts were not held to be applicable.

Lands to which the Bengal Tenancy Act does not apply.

According to the rulings of the High Court before the Bengal Tenancy Act was passed, Act X. of 1859 and Bengal Act VIII. of 1869 did not apply to land let mainly for building purposes, or for *bazars* or *ghats*, or for mining[3] purposes, or for quarrying, or to lands let in towns for other than agricultural or

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[1] Rent Commission's Report, para. 11.
[2] Selections, p. 482.
[3] *Jadunath Ghose* v. *Schœne, Kilburn, & Co.* [1883], I. L. R., 9 Cal. 671.

horticultural purposes; and the same principles have been held to apply in rulings[1] of the High Court under this Act (see notes to section 19, *post*).

Lakhirajdars may be proprietors or tenants.

Under the definition of "tenant," a *lakhirajdar* holding land from a proprietor rent-free is a "tenant."

The term *lakhirajdar* is commonly applied (*a*) to owners of revenue-free lands, and (*b*) to holders of land granted rent-free by proprietors or tenure-holders. The former *lakhirajdars* are proprietors of estates, and the latter are tenants, for they are not entered in the Collector's registers as owners of estates, and they would be bound to pay rent to the proprietors in whose estates the lands are included but for the special agreement with the proprietor or tenure-holder who granted the land rent-free. *Lakhirajdars* holding rent-free may also be trespassers if they occupied the land rent-free without permission of the proprietor or tenure-holder, and without any agreement, express or implied.

Lakhirajdars who hold from proprietors or tenure-holders may be tenure-holders, under-tenure-holders, or *raiyats*, according as they fall under any one of the definitions of these terms in the Act, while those who hold from the Government free of land-revenue are "proprietors."

Landlord.

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

Principle of the definitions of "landlord" and "tenant."

Persons concerned with land may be divided generally into rent-receivers and rent-payers. The rent-receivers are landlords, and rent-payers are tenants, under this Act. Proprietors ordinarily belong to the first class, middlemen (tenure-holders) both to the first and second, and occupiers or cultivators to the second class alone.

The term "landlord" is used in this Act with a different meaning from the English sense of the word.[2] Under the defi-

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[1] *Raniganj Coal Association* v. *Jadunath Ghosh* [1892], I. L. R., 19 Cal. 489; *Umrao* v. *Muhamad Rajabi* [1899], I. L. R., 27 Cal. 205

[2] Sir Courtenay Ilbert's speech introducing the Bill.—*Selections*, p. 42.

nition of "landlord" given in this Act, a proprietor from whom a tenure-holder holds is his landlord, the tenure-holder is an under-tenure-holder's landlord, the latter is a *raiyat's* landlord, and a *raiyat* is an under-*raiyat's* landlord. Not all proprietors are landlords, for a proprietor may cultivate all his estate himself, and have no tenants holding under him, in which case he would not be a landlord, and not all landlords are proprietors.

Rent.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Ben. Act I., 1907, and E. B. & Assam Act I., 1908.

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII., [Chapter XIV.,] and Schedule III. of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

What is and what is not rent: Abwabs.

Abwabs are not rent, for they are not "lawfully payable" (see section 74, *post*).

Services.

Services rendered for the use or occupation of land are not rent, for they are not "payable or deliverable in money or kind." The incidents of service-tenures are not affected in any way by this Act (see section 181, *post*).

Sums payable to third parties.

As to the question whether sums for the use and occupation of land which are payable to third parties, and not to the tenant's immediate landlord, are rent, in one case[1] it was held that a sum payable by a tenant to a third person, and not to his immediate landlord, was not rent. In that case the claim was by an *ijaradar* to recover a certain amount of money which, under the terms of the *ijara*-lease, was payable by the defendant to the *zamindar*; but the sum of money which the defendant had to

[1] *Ratneswar Biswas* v. *Harish Chandra Basu* [1884], I. L. R., 11 Cal. 221.

pay to the *zamindar*, and for which the suit was instituted, was not part of the "rent," properly so called, reserved by the lease.

In another case,[1] where it was stipulated in a *patni* lease that the *patnidar* was to pay on behalf of the *zamindar* two sums of money—one sum, as cesses upon the property, to the Collector, and another sum, as expenses for the maintenance of a *musjid* on the property, to the party who had to conduct the expenses of the *musjid*—it was held that the two items of money were lawfully payable on account of the use and occupation of land, and were, therefore, rent.

In a Full Bench decision,[2] it was subsequently ruled, in a suit by a landlord against a tenant for recovery of a certain sum which the latter had agreed to pay to third persons on behalf of the former, but which he had not paid, that the suit was one for rent, and not for damages. In that case it was said that the sum "did not cease to be rent by reason of the so-called assignment—an assignment to which the assignee was not a party, and which was not accepted by him."[3]

According to the terms of the lease, the tenant was to pay the money on the plaintiff's account to certain persons who were the plaintiff's landlords; he was to take from them receipts in the plaintiff's name for the money so paid; and, at the end of the year, was to produce those receipts, and take from the plaintiff a receipt for the entire amount of the rent, inclusive of the balance which he was to pay to the plaintiff direct. If the defendant failed to pay in the way agreed upon, the assignee had no cause of action against him, and the plaintiff never lost or waived his right to recover the money which was not so paid, as a part of the rent.[3]

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[1] *Mohabat Ali* v. *Mahomed Faisulla* [1898], 2 C. W. N. 455.
[2] *Basanta Kumari Debya* v. *Ashutosh Chuckerbutty* [1899], 4 C. W. N. 3.
[3] *Ib.*, at p. 8.

Where the plaintiffs executed a lease in favour of the defendant at a fixed annual rent payable by instalments, and the defendant, under instructions from the plaintiffs, paid from time to time Government revenue, cesses, expenses of litigation, &c., on their behalf, and used to set off those sums against the rent due to them under the lease, no sum of money by way of advance or otherwise from the plaintiffs having ever come into the hands of the defendant, and, after the expiry of the lease, the plaintiffs instituted a suit against the defendant for an account, it was *held* that a suit for an account was not maintainable, and that the only relief for which the plaintiffs could properly ask was a decree for rent.[1]

It has also been held that a suit brought by an assignee against a tenant is a suit to recover rent within the meaning of article 8 of Schedule II. to the Provincial Small Cause Courts Act, 1887. The money was due as rent at the time of the assignment. and it was held that the assignment did not deprive it of that character, so far, at all events, as the tenant was concerned.[2]

In another case[3] the defendants were cultivating *raiyats* who had held certain land under the Government, but not for a period sufficient to give them a right of occupancy. The plaintiffs, in a suit against the Government, succeeded in proving their title to the land. In a suit to eject the defendants as trespassers, inasmuch as they could have derived no title from the Government, who themselves had no title, and no relationship of landlord and tenant existed between them and the plaintiffs, who had not recognized their right to cultivate the lands, it was *held* that, under section 3, clauses (*3*) and (*5*), section 4, and section 5, sub-sections (*2*) and (*3*), of the Bengal Tenancy Act, the defendants were "non-occupancy *raiyats*," and were therefore not liable

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[1] *Bhekdhari Lal* v. *Bodhsingh Dudharia* [1900], I. L. R., 27 Cal. 663.
[2] *Shaikh Mansar* v. *Loke Nath Roy* [1899], 4 C. W. N. 10.
[3] *Mohima Chander Shaha* v. *Hazari Paramanik* (1889), I. L. R., 17 Cal. 45.

to ejectment except for the reasons and on the conditions specified in the Act; and that no such reasons or conditions existed in this case. It was also held that liability to pay for the "use and occupation" of land by a person between whom and the proprietor of such land there exists no relationship of landlord and tenant is a "liability to pay rent" within the meaning of section 3, clause (*5*), of the Act. Sub-section (*3*) of section 5 of the Act, it was held, is intended merely to define the position of a *raiyat* in respect to a proprietor or tenure-holder, and to distinguish him from the tenant who is afterwards described as an under-*raiyat*.

Patwaris' dues, Salami, road cess, public works cess, and damages.

Patwaris' dues (*neg* or *hisabana*) are not rent, for they are not payable for the use or occupation of land; nor, for the same reason, does a *salami* paid by a lessee in consideration for a lease fall under the denomination of "rent."[1] Nor is road cess or public works cess "rent," nor are damages for unlawful actions,[2] for none of these payments are ordinarily made for the use or occupation of land.

But, though road cess and public works cess are not "rent," they are recoverable as rent, and the provisions of sections 53 to 68 and 72 to 75, inclusive, Chapter XII., Chapter XIV., and Schedule III. of this Act apply to them; and it has been held that a suit to recover cesses not exceeding Rs. 100 falls within the provisions of section 153 of this Act barring appeals.[3] Section 174 of this Act, it has also been held, is applicable to the case of a tenure or holding sold by the landlord in execution of a decree for arrears of cesses due thereon.[4]

Dak cess and Chaukidari cess.

It has been held by the High Court in a comparatively recent case[5] that, where *dak* cess is claimed under a contract by

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[1] *Dinonath Mukerji* v. *Debnath Mullick* (1870), 13 S. W. R. 307.
[2] *Kali Krishna Tagore* v. *Issatunissa Khatun* (1897), I. L R., 24 Cal. 557.
[3] *Mohesh Chundra Chatterjee* v. *Umatara Debi* (1889), I L. R., 16 Cal. 638; *Rajani Kant Nag* v. *Jageshwar Singh* (1892), I L. R., 20 Cal 254.
[4] *Kishori Mohun Roy* v. *Sarodamani Dasi* (1890), 1 C. W. N. 30.
[5] *Watson & Co.* v. *Sri Kristo Bhumik* (1893), I. L. R., 21 Cal. 132.

which rent is payable, it must be regarded as rent. The learned Judges remarked in that case that the *dak* cess was claimed "practically as part of the rent, and, according to the definition "of that word as contained in the Bengal Tenancy Act, we think "it must be regarded as rent, that is to say, as part of what is "lawfully payable in money for use and occupation of land held "by the tenant."

Dak cess was, under section 3 of Bengal Act VIII. of 1862, realizable by the District Magistrate from *zamindars*, *sadar* farmers, and other persons paying revenue direct to Government for maintaining *zamindari daks* within the district. Section 12 of that Act declared that nothing in the Act should in any way affect or alter any contract or engagement made, or to be made, by a *zamindar* with any person holding under him. Therefore it was held that a contract under which a tenant agreed to pay *zamindari dak* cess, with and as part of his rent, made the cess recoverable as rent. This Act has been repealed by Bengal Act IV. of 1907.

It has been held by the High Court, in a suit[1] for arrears of *chaukidari* cess payable by a *patnidar* under the Patni Regulation, that the cess was not an *abwab*, but was rent payable for the use and occupation of land, and was recoverable as rent.

The decisions above referred to do not however affect cases in which the tenant has not expressly agreed to pay *dak* cess or *chaukidari* cess, which cesses, in the absence of a special agreement to pay them with, and as part of, the rent, clearly are not rent or recoverable as rent.

Produce-rent.

A suit for produce-rent or its money-value is a suit for rent under this Act, and not a suit for damages for breach of contract, and therefore is not cognizable by a Provincial Small Cause Court.[2]

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[1] *Assanulla* v. *Tirthabashini* (1895), I. L. R., 22 Cal. 680.
[2] *Shoma Mehita* v. *Rajani Biswas* (1893), 1 C. W. N. 55.

Rent due to co-sharers.

Prior to the incorporation in this Act of sections 148A and 158B by the Amending Acts of 1907 (Bengal) and 1908 (E. B. Assam) a decree obtained by some of several co-sharers for rent could not be regarded as a decree under the Bengal Tenancy Act.[1] The law has been substantially altered by these new sections.

Rent due to assignee.

A suit brought by an assignee of arrears of rent after they fell due, for recovery of the amount due, is a suit for rent, and therefore excepted from the cognisance of a Court of Small Causes.[2]

"Lawfully payable": Difference between "payable" and "recoverable."

It has been said that a sum may be lawfully payable though not lawfully recoverable. Under section 48 of this Act, a landlord of an under-*raiyat* cannot recover, by suit or otherwise through the Courts, rent exceeding the amount which he himself pays by more than 50 *per cent.* when the rent is payable under a registered lease or agreement, or by more than 25 *per cent.* in any other case; but, if an under-*raiyat* voluntarily pays an amount in excess of these limits, the sum paid has been said to be lawfully payable as rent. The correctness of this view is, however, very questionable—see notes to section 48, *post.*

Distinction between revenue and rent.

The difference between revenue and rent, though discernible in the abstract, is, in some particular cases, not manifest. The paramount title of the State entitles it to revenue; the proprietary title carries with it the right to receive rent; but the question has been asked, when the two titles have met in the Government, do the tenants pay rent or revenue? According to the Bengal Rent Commission, the proprietary title in the case supposed becomes merged in the paramount title, and rent becomes revenue.[3] As the Government has conceded to tenants in its own estates practically the same rights as those enjoyed by tenants in private estates, and realizes its rents by the same processes (excepting in the matter of the Certificate Procedure and occasionally in having recourse to summary sale for realisation of

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[1] Vide *Durga Charan Mandal* v. *Kali Prosanna Sircar* (1899), 3 C. W. N. 586.
[2] *Srish Chunder Bose* v *Nachim Kazi* (1900), I. L. R., 27 Cal. 827.
[3] Rent Commission's Report, para. 5.

rents due from transferable tenures), it appears to be really a question of no great importance whether the tenants' payments in Government estates are called rent or revenue.

Difference between revenue and rent in case of farmers of estates, the property of Government, and farmers of estates, the property of private individuals.

The Board of Revenue have, in the case of farmers of estates which are the property of the Government and farmers of estates which are the property of recusant proprietors, made a distinction between rent and revenue. Farmers of estates, the property of Government, according to the Board of Revenue and Law Officers of Government, collect *rent*, and are tenure-holders who can be ejected only by regular suit: while the farmer of an estate belonging to a recusant proprietor takes the place of the proprietor and pays land-revenue.

Money recoverable as rent.

The following claims, among others, are recoverable as rent:—

(1) Amounts payable to *zamindars* by tenure-holders, or to tenure-holders by under-tenure-holders, under the Bengal Survey Act, 1875 (see Bengal Act V. of 1875, section 38):

(2) Sums due under Part VII. of the Bengal Irrigation Act, 1876, to the Government or to any person who has entered into an agreement to collect water-rates for the Government (see Bengal Act III. of 1876, section 83):

(3) Sums payable to a landholder or superior tenant under clause (*b*) of section 42 or clause (*b*) of section 43 of the Bengal Drainage Act, 1880 (see Bengal Act VI. of 1880, section 44):

(4) Amounts payable to holders of estates or tenures under the Cess Act, 1880, with interest at 12½ *per cent. per annum* (see Bengal Act IX. of 1880, section 47):

(5) Interest on arrears of rent or other demands recoverable as rent, payable to Managers of Court of Wards' Estates (see Bengal Act III. of 1881, section 10):

(6) Amounts payable to *zamindars* or tenure-holders under an order made in pursuance of section 68 of the Bengal Embankment Act, 1882, with interest thereon (see Bengal Act II. of 1882, section 74):

(7) Sums payable to holders of estates or tenures by under-tenure-holders or cultivating *raiyats* under sections 23 and 24 of the Bengal Sanitary Drainage Act, 1895 (see Bengal Act VIII. of 1895, sections 23 and 24).

To the sums mentioned in the last paragraph, as being recoverable as rent, the provisions of the following portions of the Bengal Tenancy Act apply, *namely*, sections 53 to 68 (relating to instalments, time, and place of payment, appropriation of payments, receipts, accounts, penalties for withholding receipts, deposit of amounts due, refund of deposits, arrears, ejectment for arrears, interest on arrears, and award of damages on amounts withheld), sections 72 to 75 (relating to liability on change of landlord or after transfer of tenure or holding, illegal cesses, and penalties for exaction), Chapter XII. (relating to distraint), Chapter XIV., and Schedule III.

The Local Government having, under section 54 (*2*) of this Act, authorized the payment of rent by money-order, the payment by money-order of sums recoverable as rent is also authorized.

Rent is "property." For the purposes of Acts VIII. and X. of 1859, it was held that rent comes within the terms "property" and "moveable property;"[1] and that ruling would apparently apply under the present Act also.

Tenure. (*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

See notes to section 5, *post*.

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[1] *Mohesh Chunder Chatterjee* v. *Gooroo Pershad Roy* (1870), 13 S. W. R. 401.

(*8*) "Permanent tenure" means a tenure which is heritable, and which is not held for a limited time. **Permanent Tenure.**

See notes to Chapter III., *post*, especially under section 10.

(*9*) "Holding" means a parcel or parcels of land held by a *raiyat* and forming the subject of a separate tenancy. **Holding.**

The term "holding," though apparently limited by this definition to a parcel or parcels of land held by a *raiyat*, includes also a parcel or parcels of land held by an under-*raiyat*. In section 121, the crops of an under-*raiyat's* "holding" are referred to as being liable to distraint. An under-*raiyat's* "holding" is also mentioned in section 113 as amended by Bengal Act III. of 1898. **Holding of under-raiyats.**

The term "parcel or parcels" in this definition means an entire parcel or entire parcels, and is not intended to include an undivided fractional share in a parcel or parcels of land. Undivided shares in parcels of land cannot constitute distinct "holdings" within the meaning of this Act.[1] **Shares in holdings.**

A *raiyati* holding, which, from the definition of *raiyat* in section 5, sub-section (*2*), means land occupied by a *raiyat* for the purpose of cultivation, can ordinarily be held only in its entirety, and the cultivation of an undivided fractional share of a parcel of land would ordinarily be meaningless.[2]

An agreement by a tenant with one of several joint landlords to pay his share of the rent separately does not constitute a separate tenancy under him. The term "holding" means an entire holding.[3]

[(*10*) "Village" means the area defined, surveyed, and recorded as a distinct and separate village in— **Village: Ben. Act I., 1907, only.**

(*a*) the general land-revenue survey which has been made of the Province of Bengal, or

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[1] *Hari Charn Bose* v. *Raja Ranjit Singh* (1896), 1 C. W. N. 521; *Haribol Brohmo* v. *Tasimuddin Mondul* (1898), *ib.*, 680.

[2] *Hari Charn Bose* v. *Raja Ranjit Singh* (1896), 1 C. W. N. 521 (at p. 527).

[3] *Baidya Nath De Sarkar* v. *Sheikh Jhin* (1897), 2 C. W. N. 44.

(*b*) any survey made by the Government which may be adopted, by notification in the *Calcutta Gazette*, as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.]

Village: E. B. & A. Act I., 1908, only.

[(*10*) "Village" means the area defined, surveyed, and recorded as a distinct and separate village in—

(*a*) the general land-revenue survey of the districts which heretofore formed part of the Province of Bengal, or

(*b*) any survey made by the Government which may be adopted, by notification in the *Eastern Bengal and Assam Gazette*, as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village:

Provided that, when an order has been made under section 101 directing that a survey be made, and a record-of-rights prepared, in respect of any local area, estate, tenure, or part thereof, the Government may, by notification in the *Eastern Bengal and Assam Gazette*, declare that, in such local area, estate, tenure, or part thereof, "village" shall mean the area which, for the purposes of such survey and record-of-rights, may be adopted by

the Revenue-officer with the sanction of the Board of Revenue as the unit of survey and record.]

The Revenue Survey.

The chief object of the Revenue Survey of India was to facilitate in temporarily-settled provinces the making of new settlements of revenue; but, in permanently-settled Bengal, its chief design was to ascertain the position, boundaries, and area of every *mauza* or village.[1] The resumption and assessment to revenue of lands improperly held without payment of revenue was facilitated by a scientific survey.

The demarcation of villages preparatory to survey was conducted by a civil officer designated Superintendent of Survey, aided by a staff of Deputy Collectors and *Amins*, who marked the boundaries of villages by mud pillars (*thaks*), which were erected at certain distances. He prepared rough plans, on the scale of 16 inches to the mile, of boundaries of *mauzas* (villages) and *mahals* (estates), which are known as *thakbust* maps. The civil parties were followed by the Revenue Surveyors, to whom they handed over their rough *thakbust* maps as aids. The Revenue Surveyors then prepared accurate scientific plans, generally on the scale of 4 inches to the mile, showing the boundaries of villages (*mauzas*), but not of estates (*mahals*), and these plans are to be found in the offices of Collectors and the Surveyor-General.[2]

Village maps of the Revenue Survey.

Revenue-survey village maps have been prepared for all the territories under the administration of the Lieutenant-Governor of Bengal, with the exception of the *Jungle Mahals* of Midnapore, parts of Darjeeling, parts of the Sonthal Parganas the Tributary Mahals of Orissa, the Hazaribagh, Ranchi, Palamau, and Singbhum districts, parts of Manbhum, the Tributary Mahals of Chota Nagpur, the hilly parts of the Chittagong district, the Chittagong Hill-tracts, and parts of the present Jalpaiguri district.

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[1] Thuillier's Surveying, p. 574.
[2] Board's Rules, Vol. I., pp. 315, 317.

Mauza and Mahal: how related.

A village (*mauza*) may, and often does, comprise part of the lands of more than one estate (*mahal*), while, on the other hand, an estate may, and often does, include more than one village.

Importance of village boundaries.

Since, under sections 20 and 21 of this Act, a settled *raiyat* has occupancy-rights in all the lands that he holds for the time being in the village or villages in which he is a settled *raiyat*, the determination of village boundaries according to the revenue-survey maps is an important matter in the ascertainment of the areas in which occupancy-rights accrue.

Procedure where no revenue-survey maps have been prepared, or where they are out of date.

Powers have now been taken by clause (*b*) of this new sub-section (*10*) to adopt newer and more accurate maps than those of the Revenue Survey, when necessary, for the purpose of marking village-boundaries. The revenue-survey maps were generally on the scale of 4 inches to the mile. The cadastral maps prepared in the course of settlement-proceedings under Chapter X. of this Act are on the scale of 16 inches to the mile, and are far more accurate in consequence. See section 115A, *post*, on this point.

The Collector may in certain cases, with the sanction of the Board of Revenue, declare certain local areas to constitute villages as contemplated by this sub-section.

Villages in Chittagong.

Certain maps were prepared by Lieutenant Siddons, a Revenue Surveyor in Chittagong, in 1838; but, after some correspondence, the Bengal Government held in 1891 that they were not revenue-survey maps within the meaning of sub-section (*10*) of section 3 of the Bengal Tenancy Act, and issued a notification[1] under that clause, appointing Mr. (now Sir Charles) Allen, Settlement Officer to determine village-boundaries in that district. The boundaries of all villages in the Chittagong district have been determined by Sir Charles Allen, in exercise of the powers so conferred upon him, with the exception of the *Ramgarh Sitakund*

[1] Notification No. 4789 L. R., dated 22nd November 1893, published in the *Calcutta Gazette*, 1893, Pt. I., p. 977.

Forest Reserve, the permanently-settled portion of the *Maiskhal* Island, and some of the jungle-covered hills in the Cox's Bazar sub-division;[1] so that in Chittagong a village is the area determined as such in Sir Charles Allen's maps and records, where he has determined village-boundaries.

It sometimes happens that plots of land known as *chit zamin* or *tahsil alada* are included in one village for revenue or rent purposes, though situated in the periphery of another village. For the purposes of this Act, such plots are to be regarded as part of the village within the exterior boundary of which they are situated.[2]

"Within the same exterior boundary."

(*11*) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of *Bysak;* where the *Fasli* or *Amli* year prevails, the year commencing on the first day of *Asin*, and, where any other year prevails for agricultural purposes, that year.

Agricultural year.

A statement showing the agricultural year prevailing in different parts of Bengal, Bihar, and Orissa is printed in Appendix III., *post*, to this work.

(*12*) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihar, and Orissa made in the year 1793.

Permanent Settlement.

Section 1 of the Bengal Permanent Settlement Regulation, I. of 1793, declared that the Regulation was to have force and effect from the 22nd March 1793.

Date of Permanent Settlement of 1793.

The Bengal Rent Commission framed a definition of "Permanent Settlement" to make it clear that the settlement indicated in their Bill was in all cases that of Bengal, Bihar, and Orissa made in 1793; and not, as regards any district or area subsequently settled permanently, the Permanent Settlement of such district or area.[3]

Subsequent permanent settlements.

[1] Chittagong Settlement Report, page 89, para. 291.
[2] See "Muzaffarpur Final Report," pp. 145, 146, 148.
[3] Rent Commission's Report, para. 23.

The "Orissa" spoken of in the early Regulations included only the district of Midnapore and part of Hughli, or, more accurately, the tracts of country between the rivers Rupnarain and Subarnarekha,[1] which were permanently settled in 1793. Orissa proper was not acquired till 1803. The first settlement of the Province was made under Regulation XII. of 1805, but that settlement was not generally made permanent.

There are, however, certain estates in Orissa and in parts of Bengal and Bihar which were permanently settled subsequently to 1793.

It would appear at first sight that there is no Permanent Settlement, in the sense in which the expression is used in the Bengal Tenancy Act, in any area acquired subsequently to, or permanently settled after, 1793. This, however, was manifestly not the intention of the framers of the Act; for, in providing for the extension of the Act to Orissa, they obviously intended that *raiyats* in permanently-settled estates in that division should have the same rights as the *raiyats* in Bengal.

The High Court has accordingly held that the term "Permanent Settlement" must be interpreted liberally, and that the provisions of section 50 apply to tenures and holdings in estates permanently settled subsequently to 1793.[2] There is, it was said in the case[3] referred to, nothing in that section to show that the tenure must be situated in an estate which was permanently settled at the time of the Permanent Settlement as defined in sub-section (*12*) of section 3.

Succession. (*13*) "Succession" includes both intestate and testamentary succession:

Signed. (*14*) "Signed" includes "marked" when the person making the mark is unable to write his name; it also in-

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[1] Bengal Administration Report, 1872-73, Historical Summary, page 40, footnote.

[2] *Tamasha Bibi* v *Ashutosh Dhur* [1900], 4 C. W. N. 513.

[3] *Ib.*, at p. 515.

cludes "stamped" with the name of the person referred to:

(*15*) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette: **Prescribed.**

(*16*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act: **Collector.**

Officers in charge of sub-divisions of districts were, by a notification dated the 21st April 1886,[1] appointed to discharge the functions of a Collector under sections 69 to 71 of this Act, and, by a notification dated the 7th October 1886,[2] they were appointed to discharge the functions of a Collector under sections 12, 13, and 15. The Deputy Collector of Howrah and the Senior Deputy Collector of Gaya have also been appointed to discharge the functions of a Collector under sections 69 to 71. **Officers exercising powers of Collector.**

(*17*) "Revenue-officer," in any provision of this Act, includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision: **Revenue-officer.**

The Board of Revenue have pointed out that, under section 3, sub-section (*17*), officers cannot be invested with the general powers of a Revenue-officer, but can be invested with certain functions only, as specified in certain provisions of the Act.[3] **Vesting of officers with powers of a Revenue-officer.**

By a notification dated the 11th February 1890,[4] all Deputy Collectors have been authorized to discharge the functions of a Revenue-officer under Chapter X. of the Act, and vested with the

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[1] *Calcutta Gazette*, 28th April 1886, Part I., page 466.
[2] *Ibid*, 13th October 1886, Part I., page 1092.
[3] Settlement Manual.
[4] *Calcutta Gazette*, 11th February 1890, Part I., page 121.

powers of a Settlement-officer under rule 40, Chapter VI. of the rules[1] framed by the Government under the Act.

If an officer is appointed to discharge particular duties under particular sections of this Act, he is not thereby empowered to discharge duties under other sections. Thus, his appointment to perform particular duties does not make him a "Collector" for all the purposes of the Act.[2]

Registered.

(*18*) "Registered" means registered under any Act for the time being in force for the registration of documents:

Registration.

The law relating to the registration of documents will be found in the Indian Registration Act, XVI. of 1908. The following instruments executed under the Bengal Tenancy Act are required to be duly registered:

(1) Transfers of permanent tenures—section 12, B. T. Act:

(2) Transfers of *raiyati* holdings at fixed rates—section 18:

(3) Sub-leases by *raiyats*—section 85:

(4) Contracts of enhancement of rent—sections 29 and 43:

(5) Leases or agreements under section 48 (*a*).

In addition to these, incumbrances may be registered and notified to the landlord under section 176.

The word "registered" is also used in this Act with reference to the Land Registration Act, and also for the registration of improvements before Revenue-officers under section 80.[3]

The registration of a document can only be said to be compulsory when it is brought under section 17 of the Indian Registration Act by a specific Act of the Legislature. By Act III. of 1885 the following sections of the Transfer of Property Act (IV. of 1882) are to be read as supplemental to the Indian Registration Act, III. of 1877: see also section 93 (*2*) of Act XVI. of 1908.

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[1] Printed in Appendix V. to this work, *post*.
[2] *Mohabat Singh* v. *Umatul Fatima* [1900], I. L. R., 28 Cal. (at page 69).
[3] Holmwood's Registration Law, page 189.

Section 54.—Transfer (by sale) in the case of tangible immoveable property of the value of Rs. 100 and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of the value of less than Rs. 100, such transfer may be made either by a registered instrument or by delivery of the property.

Section 59.—Where the principal money secured is Rs. 100 or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than Rs. 100, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, and Rangoon by delivery to a creditor or his agent of documents of title to immoveable property with intent to create a security thereon.

Section 107.—A lease of immoveable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

Section 123.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by actual delivery of the property.

Such delivery may be made in the same way as goods sold may be delivered.

Section 118 must also be noted:—

"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both

things being money only, the transaction is called an 'exchange.'

"A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

It will thus be seen that the registration of deeds of sale, exchange, and mortgage of the value of Rs. 100 and upwards, leases as specified in section 107, and deeds of gift of immoveable property, is rendered compulsory.

Deeds of sale and exchange of property under Rs. 100 in value, and deeds of gift of moveable property, must be registered if they are the means of transfer, but it is conceivable that unregistered deeds of this nature might be accepted in evidence as collateral testimony of delivery of possession.[1]

Trusts.

Section 5 of the Indian Trusts Act, 1882, contains the following provisions:—

No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee *and registered*, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Under section 3 of the Trusts Act, "registered" means registered under the law for the registration of documents for the time being in force—now Act XVI. of 1908.

Thus, according to section 5 of the Trusts Act, the registration of a *trust*-deed is compulsory, and this section, in its effect, is supplemental to section 17 of Act XVI. of 1908.

Other definitions.

Definitions of words used in this Act will also be found in sections 5 ("tenure-holder" and "*raiyat*,") 76 ("improvement"), 160 ("protected interests"), and 161 ("incumbrance"), *post*.

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[1] Holmwood's Registration Law, pp. 130, 131.

For convenience, a glossary of terms used in the authorized translations of the Bengal Tenancy Act (Hindi and Bengali) is reproduced in Appendix IV., *post*. **Vernacular equivalents.**

The terms used in the vernacular Record of Rights proposed under Chapter X. in the Tirhut, Patna, and Bhagalpur divisions are exhaustively described in the "Guide and Glossary" published by authority in 1907.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely) :—

(1) tenure-holders including under-tenure-holders,

(2) *raiyats*, and

(3) under-*raiyats*, that is to say, tenants holding, whether immediately or mediately, under *raiyats*;

and the following classes of *raiyats* (namely) :—

(*a*) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(*b*) occupancy-*raiyats*, that is to say, *raiyats* having a right of occupancy in the land held by them, and

(*c*) non-occupancy-*raiyats*, that is to say, *raiyats* not having such a right of occupancy.

Principle of classification of tenants.

The principle on which the Bengal Rent Commission classified persons concerned with the holding of land was explained by them as follows :—

The owner of an estate is termed a "proprietor." The interest next below an estate, and superior to that of a *raiyat*, we have defined to be a "tenure," and the owner of a tenure a "tenure-holder." Under a tenure and above the *raiyat's* interest came an under-tenure, the owner of which is an "under-tenure-holder." If there are more than one of such middle interests, they are termed under-tenures of the first, second, &c., degree.[1]

[1] Rent Commission's Report, para. 10.

Tenure-holders and under-tenure-holders were, according to the Rent Commission's classification, practically middlemen between the proprietor and the actual cultivator. The Commission's principle of classification was subsequently adopted in the Bengal Tenancy Act, with modifications in detail.[1] The different classes of tenants mentioned in this section are defined in subsequent sections, and their status is discussed in the notes to the appropriate sections.

Distinction between "settled raiyats" and "occupancy-raiyats."

In Chapter X., as amended by Bengal Act III. of 1898, a distinction is made [section 102 (*b*)] between "settled *raiyats*" and "occupancy-*raiyats*"—see notes to section 20, *post*. "Settled *raiyats*" were omitted from section 4, apparently, by oversight. All "settled *raiyats*" have occupancy-rights in all lands held by them as *raiyats* in a village, but persons having occupancy-rights are not necessarily "settled *raiyats*;" for example, the occupancy-right might have been acquired by purchase.

Meaning of "tenure-holder" and "raiyat."

5. (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(*2*) "*Raiyat*" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to

[1] Sir Courtenay Ilbert's speech introducing the Bill: Selections, p. 54.

have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiyat* unless he holds land, either immediately under a proprietor, or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiyat*, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

Distinction between tenure-holder and raiyat.

This section describes rather than defines "tenure-holder" and "*raiyat*."[1] Whilst recognizing the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border-line between the two classes, the Select Committee was of opinion that any attempt to frame a rigid definition of either class would tend to create rather than remove difficulties.[2] In one of the debates in Council on this section, Sir STEUART BAYLEY remarked as follows:—

The question has constantly to be decided, both by Courts and by Settlement Officers, whether a man is a *raiyat* or a tenure-holder. Now, we do not absolutely define a tenure-holder, but we describe him as a person primarily, who has acquired, from a proprietor or from another tenure-holder, a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it; and we describe a *raiyat* as, primarily, a person who has a right to hold land for the purpose of cultivating it himself. The first thing, then, which the Court has to do is to

[1] Sir Steuart Bayley's speech in moving that the Reports of the Select Committee be taken into consideration: Selections, p. 411.

[2] Report, para. 5, in Selections, p. 231.

ascertain whether a man is a tenure-holder or a *raiyat*. If the land was given for the purpose of collecting rents, then he is a tenure-holder. We tell the Courts the first thing they are to look to is local custom; but local custom may not always be sufficient to guide them, and then they have to ascertain what was the original object of the tenancy. There is still some difficulty, and it is one which experienced officers tell us it is essential the Courts should be able to decide. Well, in that case, we fall back on the arbitrary presumption derived from the area of the holding. It will, I suppose, be admitted that, in nine cases out of ten, where a man takes 100 *bighas* of land, he cultivates it through others, and only cultivates a small portion of it directly.[1]

Sir STEUART BAYLEY then went on to explain that the presumption arising from the tenant's holding an area exceeding 100 *bighas* would not convert a *raiyat* into a tenure-holder, but, in cases of doubt, would give the Court assistance in determining whether a particular tenancy is that of a tenure-holder or of a *raiyat*.[1]

In deciding whether to class doubtful tenants as tenure-holders or *raiyats*, Revenue Officers working under Chapter X. of this Act have often to take into consideration the social position of the tenant. Much may be urged in favour of this method of approaching the question.

Origin of the distinction turning upon the holding of more than 100 bighas.

The distinction between tenants holding more, and tenants holding not more, than 100 *bighas* was originally proposed by the Bengal Rent Commission, and was based on the analogy of sections 6 and 7 of Regulation XIX. of 1793, which make a distinction between alienated revenue-free lands exceeding, and alienated revenue-free lands not exceeding, 100 *bighas*.[2] There are many tenures of less than 100 *bighas*, and there may be many occupancy-holdings of more than 100 *bighas*.

Case-law as to distinction between tenure-holders and raiyats before the passing of the Bengal Tenancy Act.

The case-law as to the distinction between tenure-holders and *raiyats* before the passing of this Act was uncertain and in-

[1] Selections, p. 483.
[2] Rent Commission's Report, p. 259.

consistent, and was built up of isolated cases dealing with individual rights which were the complement of the rights of other persons not before the Court, and were therefore not duly considered. It was held under the old law[1] —

(1) that, if a person took land and at once sublet it, he became a middleman (tenure-holder), and did not acquire occupancy-rights in such land;[2]

(2) that, if a *raiyat*, who had acquired a right of occupancy in land, sublet such land; he did not thereby forfeit his right of occupancy;[3]

(3) that such a *raiyat* could not, by so doing, alter the nature of his holding, and convert it into an under-tenure.[4]

These propositions would appear to hold good under the present Act also.

Distinction turning upon the collecting of rent.

It has been ruled by the High Court since the passing of this Act that the mere fact, that a person has acquired a right to hold land for the purpose of collecting rent, is not sufficient to prove that he is a tenure-holder. It must be proved that the land is used or was let out for agricultural or horticultural purposes.[5] In the case referred to, the land was situated within the Municipality of Dacca, and there was nothing to show that it was let out for agricultural or horticultural purposes. But, if agricultural or horticultural land be let out for the purpose of collecting rents, the lessee would be a "tenure-holder," although he may not cultivate any of the land himself.

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[1] Rent Commission's Report, para. 19; Field's Digest, p. 38, first footnote.

[2] *Ram Mungul Ghose* v. *Lukhi Narain Shaha* [1864], 1 S. W. R. 71; *Hurrish Chunder Koondoo* v. *Alexander* [1863], Marsh. 479.

[3] *Kali Kishore Chatterjee* v. *Ram Churn Shah* [1868], 9 S. W. R. 344; *Haran Chunder Pal* v. *Mookta Sundari* [1868], 10 S. W. R. 113; 1 B. L. R. (A. C.) 81; *Jamir Gazi* v. *Gonai Mundal* [1869], 12 S. W. R. 110; *Koshul Mahomed* v. *Joynudin* [1869], 12 S. W. R. 451.

[4] *Karn Lal Thakur* v. *Luchmiput Duga* [1867], 7 S. W. R. 15; *Harihar Mukerji* v. *Jadunath Ghose* [1867], 7 S. W. R. 114.

[5] *Umrao Bibi* v. *Mahomed Rojabi* [1899], I. L. R., 27 Cal. 205 See also *Bengal Indigo Co.* v. *Raghebar Das* [1896], I. L. R., 24 Cal. 272.

List of tenures, under-tenures, and raiyati holdings.

Since the definition of "tenure" given in this section is not exhaustive, and no complete definition of the term can be given, every case in which there is a doubt as to whether a particular tenancy is a tenure or a *raiyati* holding must be dealt with on its merits, for even the vernacular names of tenancies, as to which there may be rulings of the High Court, are misleading. What is known as a "*jote*" may be a tenure in one district and a mere *raiyati* holding in another, and so of *taluks* and other vernacular expressions. It is impossible to enumerate and classify the numerous tenures that exist in Bengal, Bihar, and Orissa; but a list is given, in Appendix IV. to this work, *post*, of vernacular names of some tenures, under-tenures, and *raiyati* holdings. That list has been compiled from reports of Settlement Officers and other sources of information. It contains a description of each tenure and holding and references to the rulings of the High Court, where there are any, relating to them.

The word "tenure" used in different senses.

It is to be remembered that the word "tenure," as defined in this Act, does not bear the same meaning as it does in the Cess Act and other Acts.[1] In section 114 the word "tenure" is used in an extended sense as including all revenue-free and rent-free tenures and holdings within a local area, estate, or tenure—see the *Explanation* to that section, *post*.

Liability of heirs of occupancy-raiyat to pay rent until surrender.

Sub-section (*2*).—It has been held by the High Court that the heirs of an occupancy-*raiyat* dying intestate are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by section 86 of this Act.[2] The *zamindar* would not be at liberty to occupy the lands of such a tenant unless he has obtained from the heirs something amounting to an actual surrender, and unless he himself has proceeded in the manner prescribed by section 87, and therefore is entitled to rent from the heirs until they surrender the land.[3]

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[1] *Prosanna Kumar Tagore* v. *Kumar Singh* [1900], 5 C. W. N. 535.

[2] *Piyari Mohun Mukerji* v. *Kumari Chunder Sirkar* [1892], I. L. R., 19 Cal. 790.

[3] *Ib.*, p. 793.

Strength of presumption under sub-section (5).

Where the area of land held by a tenant exceeds 100 standard *bighas*, the presumption under section 5 (*5*) of this Act is, that he is a tenure-holder, and not a *raiyat*. This presumption is not sufficiently rebutted by the fact that the *kabuliyat* executed by the tenant was on a printed form intended for cultivators, or that, in a receipt for rent given by the landlord to the tenant, the latter was described as a *raiyat*. The question whether a tenant is a tenure-holder or a *raiyat* is one of substance, and not of form.[1]

There is no legal presumption whatever that the holder of less than 100 standard *bighas* is a *raiyat*.

(*Note*.—An area of 100 standard *bighas* of 1600 square yards each is equivalent to a little over 33 acres.)

Lessee under zar-i-peshgi leases held not to be a "raiyat."

Where a tenant, holding under a lease assigned to him by the original lessee, had continuously occupied the land under successive leases, and claimed to be a *raiyat* within the meaning of this Act, either with or without occupancy-rights, the area leased being more than 100 *bighas*, it was held by the Privy Council that the tenant was neither an occupancy nor a non-occupancy *raiyat* under this Act.[2] The leases in the case referred to were *zar-i-peshgi* leases, as to which see Appendix IV., *post*, and contained express provisions for the land to be given up at their expiration.

Use of land for shops, homesteads, tanks, buildings, or coal depôt.

It has been held that a *raiyat* does not become a tenure-holder merely because, instead of cultivating the land, he erects shops on it, and takes rent from the shop-keepers;[3] and that, where land let for agricultural purposes has, with the consent of the landlord, ceased to be agricultural, and the tenant has built a homestead, or used part of it for tanks, the nature of the tenancy is not thereby changed;[4] but, where land is let entirely for houses and buildings, and not for agricultural purposes, it does not come within the purview of this Act. Hence land granted under a lease merely

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[1] *Gokul Mandar* v. *Pudmanund Singh* [1902], 6 C. W. N. 825.
[2] *Bengal Indigo Company* v. *Raghogar Das* [1896], I. L. R., 24 Cal. 272.
[3] *Khayerunnissa* v. *Ahmed Reza* [1869], 11 S. W. R. 88.
Prosanna Kumar Chatterji v. *Jagernath Basakh* [1881], 10 C. L. R. 25.

for building purposes and for establishing a coal depôt was held not to come within the purview of this Act, since the lease was not for agricultural or horticultural purposes, or for any of the purposes mentioned in section 5; and the lessee was held to be neither a tenure-holder nor a *raiyat* within the meaning of the Act.[1]

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[1] *Raniganj Coal Association* v. *Jadunath Ghose* [1892], I. L. R., 19 Cal. 489.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of Rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Meaning of section 6 obscure.

This section purports to specify the conditions on proof of the existence of which tenures held from the time of the Permanent Settlement are *liable* to enhancement, while section 7 prescribes rules and limitations regarding the *amount* of the enhancement which may be imposed on tenures existing from the time of the Permanent Settlement when they *are* liable to enhancement, and also lays down rules for enhancement of rent of tenures subsequently created when they are liable to enhancement.

Section 6 only deals with the question of the *liability* of a tenure held from the time of the Permanent Settlement to enhancement. The rent of every tenure held from the time of the Permanent Settlement either has or has not been

enhanced since that time. If the rent of any particular tenure *has* been so enhanced, neither is proof of local custom required to make it liable to enhancement in future, nor is proof required for that purpose of any of the other conditions specified in clauses (*a*) and (*b*) of section 6. If the rent has *not* been enhanced since the Permanent Settlement, the tenure would be protected from enhancement, by section 50 of this Act, except on the ground of alteration of the area. It is not apparent, then, how section 6 can come into operation at all at the present day.

Rent Commission's views.

The Rent Commission, in fact, acknowledged that the number of tenures and under-tenures which could be affected by section 6 was probably very small, and they proposed to enact that, in order to entitle a tenure-holder or under-tenure-holder to the benefit of the section, it would be sufficient to show that the tenure or under tenure was in existence at the time of the Permanent Settlement, and could then have been registered in the Collector's office, even though it had not been actually registered.[1]

Notices of enhancement not now required.

Notices of enhancement are no longer required. On this point, the Rent Commission remarked as follows :—

> Such a large percentage of enhancement-cases have failed because it was not found that the notice had been served, or because the notice was defective in form, that it has appeared to be highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have accordingly made the institution of the enhancement-suit to be notice to the tenant.[2]

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[1] Rent Commission's Report, para. 25; *Bama Sundari Dasi* v. *Radhika Chaudrani* [1869], 13 S. W. R., P. C., 11.

S. 6 is in substance taken from cl. (*i*) of section 51 of Regulation VIII. of 1793 (repealed by the Bengal Tenancy Act, wherever the Act is in force), which ran as follows :—

"No *zamindar* or other actual proprietor of land shall demand an increase from the *talukdars* dependent on him, although he should himself be subject to the payment of an increase of *jama* to Government, except upon proof that he is entitled so to do, either by the special custom of the district or by the conditions under which the *talukdar* holds his tenure, or that the *talukdar*, by receiving abatements from his *jama*, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it."

[2] Rent Commission's Report, para. 63.

These remarks apply to enhancement of the rents of *raiyati* holdings as well as to the enhancement of the rents of tenures.

Postponement of date from which decree for enhancement takes effect.

With a view, however, to giving the tenant due warning of a contemplated enhancement, the Rent Commission proposed that the plaint, in order to affect the rent of the following year, should be presented, in districts in which the *Fasli* or *Amli* year prevails, in or before the month of *Bysak*, and, in districts in which the Bengali year prevails, in or before the month of *Aughan*.[1] Section 154 of this Act provides that "a decree for enhancement of rent, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following," but a later date may be fixed by the Court for special reasons. See also section 110 as to the date from which an enhancement takes effect when the rent is settled under Chapter X. of the Act. The postponement of the date from which a decree for enhancement takes effect was intended to serve the same purpose as enhancement-notices under the former law.

Limits of enhancement of rent of tenures.

7. (*1*) Where the rent of a tenure-hoder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(*2*) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(*3*) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten *per centum* of the balance which remains after

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[1] Rent Commission's Report, para. 63.

deducting, from the gross rents payable to him, the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(*4*) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion, and included in the gross rents aforesaid.

Previous law.

There were in the previous law no express provisions for the enhancement of rents of tenures since the repeal of section 8 of Regulation V. of 1812[1] by Act X. of 1859.

The "customary rate."

When the rent of a tenure is liable to enhancement, the present section prescribes certain principles according to which the enhancement is to be regulated. Subject to any contract between the parties, the rent may be enhanced up to the customary rate payable by persons holding similar tenures in the vicinity The expression "customary rate" was substituted by the Rent Commission for the old expression *pargana* or prevailing rate. In point of fact, a customary rate is rarely to be found for any class of tenure at the present day. In the interval between

[1] *See* Field's Digest, p. 27, footnote.

the publication of the Rent Commission's Report and the passing of the Bengal Tenancy Act, inquiries were instituted by the Bengal Government in order to ascertain whether *pargana* or customary rates still existed. It was found that, in almost every area subjected to inquiry, *pargana* or customary rates did not exist. Not only was the multiplicity of rates found to be almost inexhaustible, but little relation could be traced between the existing rates and the quality of the soil.[1]

Customary rate in Chittagong.

The Noabad *Talukdars* of Chittagong used to pay a customary rate of Rs. 16 a droon (=6·35 acres), but, in the recent settlement of that district, their rents were enhanced according to the rules laid down in sub-sections (*3*) and (*4*) of section 7, by which the fair rents payable by tenures liable to enhancement have, in fact, been determined in all settlements of rent under Chapter X. of this Act since it came into force. The 10 *per cent.* rule was taken from section 8 of Regulation V. of 1812.

Example of how rents of tenures have been settled by Revenue Officers in practice.

Chittagong.

In practice it has been found necessary, in most of the recent settlements of rents under Chapter X., to allow tenure-holders more than 10 *per cent.* after deducting, from the gross rents payable to them, the expenses of collection. In Chittagong, 30 *per cent.* on the gross rents, inclusive of cost of collection, was ordinarily allowed, and, where an under-tenure-holder intervened between the cultivator and the tenure-holder, a larger percentage was given.[2]

Tippera: Purnea.

Interesting details about the practical working of section 7 are given at page 101 of the Chakla-Roshanabad[3] Settlement Report, and at pp. 74 to 80 of the Purnea[4] Settlement Report.

What tenures liable to enhancement.

As to tenures that are, and tenures that are not, liable to enhancement, see Appendix IV. to this work, *post.*

Onus of proof under this section.

Section 27 lays down that the rent for the time being payable by an occupancy-*raiyat* shall be presumed to be fair and

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[1] Selections, p. 417.
[2] Chittagong Settlement Report, pp. 129 to 131, paras. 447 to 451.
[3] Report by J. G. Cunning, I.C.S.: 1859.
[4] Report by Editor: 1908.

equitable until the contrary is proved; and, though there is no such presumption specifically prescribed as regards the rent of tenure-holders, the principle is of general application. Hence, it was held by the High Court that, in a suit for enhancement of the rent of a tenure under section 7, it was for the plaintiff to start his case by proving that the existing rate was below the customary rate payable by persons holding similar tenures in the vicinity, or that it was not fair and equitable, before the *onus* could be shifted to the defendant, to prove that the existing rent was fair and equitable.[1]

The Privy Council has ruled that the fact that a tenure-holder realized far more from his tenants than he paid to his superior landlord, was *primâ-facie* evidence that the rent payable by him to the landlord was not fair and equitable.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual, that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Principle.

Sir STEUART BAYLEY, in explaining the principle and meaning of this section, remarked:—

> Although a man might hold land at a low rate of rent for some time, yet, when his rent was enhanced, it was not in the interest of the Government or the proprietor to reduce that man's means of subsistence..... If the whole of the enhanced rent was demanded at once, the chances are that his cultivation would be injured—that he would have to sell his bullocks and reduce his capital. It is not desirable therefore to reduce his agricultural resources too suddenly.[2]

Similar provisions in other sections.

This section is confined to tenures, but a similar power to order progressive enhancement of rents of occupancy-*raiyats* is

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[1] *Hem Chandra Chowdhry* v. *Kali Prosanna Bahadur* [1899], I. L. R., 26 Cal. 832.

[2] Selections, p. 485.

given to the Civil Courts by section 36. Revenue Officers settling rents under Chapter X. have also a similar power by virtue of sections 104A (*d*) and 105 (*4*).

Rent once enhanced may not be enhanced for fifteen years by a Court.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Principle.

Apparently there is nothing to prevent a tenure-holder from contracting to pay an enhanced rent within fifteen years from a prior enhancement, but a Court cannot decree an enhancement within fifteen years of a prior enhancement.

Similar provisions in other sections.

A more stringent restriction is put on the enhancement of the rents of occupancy-*raiyats* by sections 29 (*c*) and 37 (*1*). When the rents of tenures or occupancy-holdings are settled under Chapter X. of this Act, they are protected by section 113 from enhancement for fifteen years except on the ground of a landlord's improvement or subsequent alteration in area. The rents of non-occupancy-*raiyats*' holdings settled under Chapter X. are protected by section 113 from enhancement for five years. See also section 40A, which protects commuted rents from enhancement for fifteen years.

Restriction on reduction of rents.

It is to be noted that section 9 protects tenure-holders' rents from enhancement *by a Court* during fifteen years, when the rent has been enhanced by a Court or by a contract: and sections 29 (*c*) and 37 (*1*) protect occupancy-*raiyats*' rents from enhancement *by a Court or by a contract* for fifteen years after any enhancement by a Court or by a contract; but these sections make no provision as regards reduction within that period of rents enhanced, while section 113 provides that the rent of a tenure-holder or occupancy-*raiyat*, settled by a Revenue-officer, shall be neither enhanced nor reduced for fifteen years except on the ground of alteration of area, or on the ground specified in section 38 (*a*). See also section 40A.

Other Incidents of Tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that, where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Varying incidents of tenures.

Of tenures, some are transferable, others are non-transferable; some are heritable, others non-heritable; some are permanent, others non-permanent.

A farm (*ijara*) is ordinarily non-transferable and always non permanent; a *ghatwali* tenure is non-transferable and permanent.

A tenure might, under the old law, be transferable without being held at a fixed rent, and might be held at a fixed rent without being transferable; it might be transferable without being heritable, and heritable without being transferable.[1] Under the law as it now stands (see section 11, *post*), all permanent tenures are, subject to the provisions of this Act, transferable and heritable.

What is a permanent tenure.

The Rent Commission, in para. 22 of their report and sections 11 and 13 of their draft Bill, proposed that every tenure which had been held for twelve years should be deemed to be a permanent tenure, and that all permanent tenures should be transferable and heritable. The latter part of their recommendation was in substance embodied in section 11 of this Act, but the only rule laid down for determining what is and what is not a permanent tenure is that contained in section 3 (*8*).

A permanent tenure may now be said to be a tenure the holder of which has a permanent interest in the land, whether it

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[1] Field's Digest, Art. 18, and cases there cited.

be held at a fixed rent, or at a rent that is liable to enhancement from time to time in accordance with the provisions of this Act. A tenure may be made permanent, transferable, and heritable (*1*) by express provisions of law, (*2*) by contract, or (*3*) by custom or the course of dealing therewith. It is not at all necessary for the incident of fixity of rent to be established before a Court or Revenue-officer is justified in concluding that a tenure is permanent by custom or course of dealing, provided that its heritability is established, and that it is not held for a limited time. Whether any particular tenure is or is not permanent, transferable, and heritable is a question to be decided by the Court having jurisdiction in each case, regard being had to the conditions of the tenure, the terms of the instrument (if any) creating it, the circumstances in which it was created, and the intention of the parties. If a tenure is found to be permanent, it must be also transferable and heritable except where otherwise provided by this Act (see section 11, *post*, and notes thereto).

What tenures are permanent, heritable, or transferable.

As to what tenures are permanent, heritable, or transferable, see Appendix IV. to this work, *post*. The list therein given is by no means exhaustive.

Conditions for breach of which a permanent tenure-holder is liable to be ejected.

The breach of any condition for violation of which a permanent tenure-holder has agreed by contract to be liable to ejectment renders him so liable if the contract was made before the commencement of this Act; but, if the contract was made after the commencement of the Act, the condition must be consistent with it. Hence a condition in a contract made after the commencement of the Act, declaring a tenure-holder liable to ejectment for non-payment of rent, does not make him really liable to ejectment, because the condition would be inconsistent with section 65. Such a condition is unenforceable.

So, too, the breach of a condition in a contract entered into after the commencement of this Act, making a tenure-holder liable to ejectment for making improvements or for claiming compensation for them, would not render him liable to

ejectment, because such a condition would be inconsistent with section 178, nor would the breach of a condition prohibiting a permanent tenure-holder in a permanently-settled estate from granting a *mukurrari* lease render him liable to ejectment, for the condition would be inconsistent with section 179 (see notes to that section, *post*).

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Does this section make all permanent tenures transferable notwithstanding any custom to the contrary?

This section should be read with section 183, which declares that nothing in this Act shall affect any custom, usage, or customary right not inconsistent with, or not, expressly or by necessary implication, modified or abolished by, its provisions. In Appendix IV., *infra*, some permanent tenures are mentioned which are said to be transferable by custom only with the consent of the landlord; and with reference to them the question arises—are they by section 11 made transferable without such consent? Is the incident of non-transferability by custom without the consent of the landlord inconsistent with, or, expressly or by necessary implication, modified or abolished by, this section? The answer should apparently be in the affirmative.

There can be no doubt that it was the intention of the Legislature by this section to make all permanent tenures, other than service-tenures, transferable, for, when the Bill was being discussed in Council, the Maharaja of Durbhanga moved[1] that the section be omitted, and that the transferability or non-transferability of permanent tenures be left to local custom, and the Hon'ble Mr. Reynolds, in opposing the motion, said—

The transferability of a permanent tenure is a generally-accepted principle. Section 13 of the Bill of the Rent Commission declared that all permanent tenures should be heritable, devisable, and transferable, and in

[1] Selections, p. 486.

their report the Commission said that they had merely stated what they believed to be in accordance with the accepted usage in the country. The only case in which a permanent tenure is noticed in the Digest as not being transferable is the case of the *ghatwali* tenure, and this is covered by section 181 of the Bill.[1]

The amendment proposed by the Maharaja of Durbhanga was rejected. It therefore appears that the intention of the Legislature was to declare all permanent tenures transferable, with the exception of *ghatwali* and other service-tenures, the transferability or non-transferability of which is not affected one way or the other by this Act (see section 181, *post*).

Section 11 not in force in Orissa. Transferability of sarbarakari tenures.

Section 11 is not in force in Orissa, and does not affect the transferability or non-transferability of *sarabarkari* tenures in that Division, as to which see Appendix IV., *infra*.

Mukurrari leases by permanent tenure-holders.

Under section 179 the holder of a permanent tenure in a permanently-settled estate can grant a permanent *mukurrari* lease—see notes to that section, *post*.

Onus of proof of transferability of non-permanent tenures.

As to the transferability of tenures that are not permanent, it was held by the High Court in one case[2] that there is no presumption that any tenure is not transferable, and that a landlord, who sues for *khas* possession on the ground that a tenure sold was not transferable, must establish his case as an ordinary plaintiff. It does not appear from the report of that case whether the disputed land formed a *raiyati* holding or a tenure within the meaning of the Bengal Tenancy Act. In another case,[3] where a suit was brought to recover possession of certain lands forming part of the estate of the plaintiffs, and constituting a *raiyati* holding, which lands were sold in execution of a money-decree, and purchased by the defendant, and the defendant set up that the tenure was of a permanent and transferable nature, it was *held* that the onus of proving the transferability was on the defendant. In this case

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[1] Selections, p. 486.

[2] *Daya Chand Shaha* v. *Anand Chunder Sen Mazumdar* [1887], I. L. R., 14 Cal. 382.

[3] *Kripamayi Dabia* v. *Durga Govind Sircar* [1887], I. L. R., 15 Cal. 89.

the landlord was no party to the sale, and there was nothing to show that he had accepted the purchaser as his tenant.

12. (*1*) A transfer of a permanent tenure by sale, gift, or mortgage (other than a transfer by a sale in execution of a decree, or by a summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument. Voluntary transfer of permanent tenure.

(*2*) A registering officer shall not register any instrument purporting or operating to transfer, by sale, gift, or usufructuary[1] mortgage, a permanent tenure unless there is paid to him, in addition to any fees payable under the Act* for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :— *New Act XVI. of 1908.

(*a*) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure, provided that no such fee shall be less than one rupee or more than one hundred rupees; and,

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees [together with the costs necessary for the transmission of the landlord's fee to the landlord.] Ben. Act I., 1907; E. B. A. Act I, 1908.

(*3*) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee, [the costs necessary for the transmission of the same,] and a notice of the transfer and registration in the prescribed form, and the Collector shall cause Ben. Act I., 1907; E. B. & A. Act I., 1908.

[1] The word "usufructuary" has been inserted by Act VIII. of 1886, s. 1.

Ben. Act I., 1907; E. B. & A. Act I., 1908.

the fee to be [transmitted] to, and the notice to be served on, the landlord [named in the notice] in the prescribed manner.

Power to make rules, etc.

Section 189 of this Act (as amended in 1907 and 1908) gives the Local Government powers to make rules so as to render sections 12, 13, 15, 17, 18 workable.

Object of sections 12 to 26.

The object aimed at by sections 12 to 16 was to provide a machinery for enabling landlords to voluntarily register, in their offices, transfers of permanent tenures, instead of requiring or compelling them to do so as section 27 of Act X. of 1859 and section 26 of Bengal Act VIII. of 1869 attempted to do. This object has hardly been achieved.

Rules as to registration, service of notice, and payment of fees.

The rules for registration of documents, for service of notices, and for payment of fees to landlords, under this section, are given in Appendix VI., *infra*.

New provisions as to landlord's fee.

Section 12 has been amended by Bengal Act I. of 1903 (Validation and Amendment Act), sections 1 and 2, which are as follow :—

Validation of transfers of tenures and holdings and shares in the same.

1. No transfer which has heretofore been made, or which may hereafter be made, under section 12, section 13, section 17, or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity, or of a share in such tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid :

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act.

Explanation.—A decree in a suit for rent which has become final, disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

Realisation of fee when left unpaid.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this Act,

or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realisation of such fee from the transferee, or from the auction-purchaser, or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court; and, on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realisation, from such person, as if it were an arrear of revenue.

It is declared in section 3 of Bengal Act I. of 1903 that nothing in section 1 of that Act shall be deemed to affect the provisions of section 88 of the Bengal Tenancy Act, 1885.

Decree pending at commencement of Bengal Act I. of 1903.

A decree passed before the passing of Bengal Act I. of 1903, but pending in appeal at the commencement of that Act, is governed by section 1 of the Act, as not being final. Consequently, the plaintiff's claim for rent would not be liable to dismissal on the ground that the transfer to him was invalid by reason of the landlord's fee not having been paid as required by section 12 of the Bengal Tenancy Act, 1885.[1]

Failure of attempt of Legislature to enforce registration of all permanent tenures.

It was proposed, after the passing of the Bengal Tenancy Act, to legislate with a view to the enforcement of a system of official registration of all permanent tenures, but it was found that the determination of questions relating to the permanence, transferability, and other incidents of all tenures within the territories under the administration of the Lieutenant-Governor of Bengal would be so difficult, and would raise so much litigation, that the Bill was dropped at the request of the British Indian Association. The extension of the preparation of Records of Rights under Chapter X of this Act has helped largely to the attainment of this object, as possession and title are co-extensive in the majority of cases, and possession gives title by lapse of time.

[1] *Peary Mohun Pal* v. *Arsed Ali* [1904], 8 C. W. N. 239.

Sub-divisional Officers vested with powers of Collectors under sections 12, 13, and 15.

Officers in charge of sub-divisions have, by a notification dated 7th October 1886 (published in the *Calcutta Gazette*, 1886, Part I., page 1092), been vested with the powers of Collectors for the purpose of discharging the functions referred to in sections 12, 13, and 15.

Court-fees leviable on applications for refund of landlord's fees.

Applications or claims for the refund of landlords' fees are liable to court-fee, under both clauses (*a*) and (*b*) of Article I. of Schedule II. to the Court Fees Act, 1870, of one anna when the amount claimed is less than Rs. 50, and of eight annas in other cases.[1] When, however, the amount claimed does not exceed Rs. 25, and the application is made within three months of the date of the deposit, then, under Government of India's Notification No. 849 dated the 16th February 1883 (published on page 122 of Part I. of the *Gazette of India* of the 17th *idem*) no court-fee is required.

Voluntary transfer complete on registration.

When a tenure is in fact permanent and transferable, it has been held that a voluntary transfer of it becomes complete from the date of registration of the deed of transfer.[2] Sub-section (*2*) of section 12, it was said, in the judgment of the High Court,—

> provides a condition precedent to the registration that certain moneys shall be paid by the vendor into the hands of the Registrar before he shall be entitled to the registration; but the registration concludes all that, because the registration could not take place unless those things had been done . . . . Then comes another sub-section, which provides what the Registrar is to do after the registration, how he is to dispose of the money in his hands, and what notices he is to give of the fact of registration; but that seems to us to be a mere question as to how he is to deal with the matter, and how the Collector is to deal with the money when it comes into his hands. But, so far as the transfer is concerned, the only thing which this Act says is necessary to complete it is registration. That was done, and it seems to me that the transfer was complete as soon as the document was registered.[3]

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[1] Board of Revenue Circular No. 2 of June, 1894.
[2] *Kristo Bulluv Ghose* v. *Kristo Lal Singh* [1889], I. L. R., 16 Cal. 642.
[3] *Ib.*, at page 644.

If a tenure is not in fact transferable, the mere fact of transfer being made by a document duly registered does not make the transfer valid even though the landlord may have received notice of the transfer under section 12, and may refrain from doing anything to question its validity. In such a case the transferor still continues liable to the landlord for the rent.

Registration does not validate an unlawful transfer.

But, if a tenure is in fact permanent and transferable, and has been transferred by a duly-registered deed of sale, and if the landlord's fee has been paid and notice of the transfer has been given, and if the landlord then fails or refuses to register the transfer, he does so at his own risk, since the transferor and transferee will have done all that the law requires of them.

Non-recognition by landlord of valid transfer.

After a recorded tenant has transferred his transferable tenure to another person, and that transfer has been duly registered under the provisions of this Act, he is no longer liable for the rent of the tenure, although the landlord may not have received actual notice of the transfer;[1] but a transfer of a tenure made on the terms of this section is not binding on the landlord, if there be a contract between the landlord and the tenant that the transfer shall not be valid and binding until security to the satisfaction of the landlord has been furnished by the transferee, when such security has not been furnished. The transferor continues in that case liable for the rent.[2]

Tenant not liable for rent after registration of transfer: exceptions.

In one case[3] the plaintiffs sued to recover possession of their share of certain rent-paying lands on the allegation that they were entitled to a one-third share of the lands by inheritance from the last recorded tenant, and another one-third share by purchase from one of his heirs; that the defendants Nos. 2 and 3 were entitled to the remaining one-third share; that, for some years, they and the said defendants had been paying rent to the landlord and obtaining separate rent-receipts; that the defendants Nos. 2 and

Ananda Kumar Naskar v. Hari Das Haldar.

[1] *Chintamani Dutt* v. *Rash Behari Mandal* [1891], I. L. R., 19 Cal. 17.
[2] *Dinobundhu Roy* v. *W. C. Banerjee* [1892], I. L. R., 19 Cal. 774.
[3] *Ananda Kumar Naskar* v. *Hari Das Haldar* [1900], I. L. R., 27 Cal. 545.

3, in collusion with the landlord, allowed a decree to be passed against them in respect of the entire *jama*, in execution of which the said lands were sold and were purchased by defendant No. 1. The defence of defendant No. 1, *inter alia*, was, that, as the rent-suit brought by the landlord was against the person who was the *sarbarakar* or manager of the *jama*, therefore, by the sale in execution of the decree obtained in that suit, the entire *jama* passed. It was *held* that, as the landlord was bound to recognize the plaintiffs as tenants in the place of the last recorded tenant, and also as he chose to accept rent from the plaintiffs and the defendants Nos. 2 and 3 separately, he had no right to ignore the plaintiffs, and proceed only against the defendants; and that the entire *jama* did not pass by the sale, and the plaintiffs' right was not affected thereby.

Section 12 applies to darpatnis, but not to patni tenures.

Section 12 does not apply to *patni* tenures, but does apply to *darpatnis*—see notes to section 13, *post*.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, [or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed],[1] the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, [or making a decree or order absolute for the foreclosure],[2] require the purchaser [or mortgagee][3] to pay into Court the landlord's fee prescribed by the last-foregoing section, [together with the costs necessary for its transmission to the landlord] and such further fee for service of notice of the sale [or final foreclosure][4] on the landlord as may be prescribed.

Ben. Act I, 1907; E. B. & A. Act I., 1908.

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[1] These words were inserted by Act VIII. of 1886, s. 2 (*1*)
[2] These words were inserted by Act VIII. of 1886, s. 2 (*2*).
[3] These words were inserted by Act VIII. of 1886, s. 2 (*3*).
[4] These words were inserted by Act VIII. of 1886, s. 2 (*4*).

(2) When the sale has been confirmed, [or the decree or order absolute for the foreclosure has been made],[1] the Court shall send to the Collector the landlord's fee, [the costs necessary for the transmission of the same], and a notice of the sale [or final foreclosure],[2] in the prescribed form, and the Collector shall cause the fee to be [transmitted] to, and the notice to be served on, the landlord [named in the notice] in the prescribed manner.

Ben. Act I., 1907; E. B. & A. Act I., 1908.

Ditto.

Ditto.

The object of this section is to secure notice to landlords of transfers of permanent tenures and the tender of the landlord's fee, when the transfer is made by sale in execution of a decree, other than a decree for rent, or by foreclosure of a mortgage other than a usufructuary mortgage. As the section originally stood, no provision was made for securing notice of transfers of permanent tenures and tender of the landlord's fee to the landlord, when the transfer was made by foreclosure of a usufructuary mortgage. Hence the Act, as originally passed, was amended by Act VIII. of 1886. By Bengal Act I. of 1907 and E. B. Assam Act I. of 1908, the words in thick square brackets were added.

Object of section 13.

Where a permanent tenure was sold in execution of a decree other than a decree for arrears of rent due in respect thereof, and the landlord's fee prescribed by section 12 was not paid before confirmation of the sale, the sale was, as the law stood till the passing of Bengal Act I. of 1903, invalid.[3]

Sale formerly invalid under section 13 unless landlord's fee paid before confirmation.

But this has been altered by section 1 of Bengal Act I. of 1903 (printed, *ante*, page 100), which declares that the non-payment of the landlord's fee shall not invalidate a transfer. The compulsory recovery of such fee is provided for by section 2 of the said Act (printed *ante*, page 100).

Present law as to payment of landlord's fee.

By section 12 a Registering Officer was prohibited from registering a deed of voluntary transfer of a permanent tenure

Sections 12 and 13 contrasted.

[1] These words were inserted by Act VIII. of 1886, s 2 (5).
[2] These words were inserted by Act VIII. of 1886, s. 2 (6).
[3] *Babar Ali* v. *Krishna Manini Dassi* [1899], I. L. R., 26 Cal. 603.

unless the landlord's fee was paid, and a voluntary transfer could only be made by a registered instrument. But, under section 13, a sale of a permanent tenure in execution of a decree other than a decree for arrears of rent due in respect of the tenure was invalid unless the landlord's fee had been paid before confirmation of the sale. Now, however, by sections 1 and 2, Bengal Act I. of 1903 (printed, *ante*, page 100), the payment of the landlord's fee is placed on the same footing in the case of both section 12 and section 13.

Section 13 does not apply to patni tenures.

Section 195 (*e*), *post*, provides that nothing in this Act shall affect any enactment relating to *patni* tenures, in so far as it relates to those tenures. Under sections 5 and 6 of the Bengal *Patni Taluks* Regulation, VIII. of 1819, application has to be made for registration of the transfer of a *patni* tenure in the *zamindar's sherista*, and the landlord is entitled to a fee of 2 *per cent.* on the annual rent of the tenure transferred. As that Regulation is not affected by anything in this Act, the registration of transfers of *patni* tenures must continue to be made, as before the passing of this Act, in the *zamindar's sherista*, and not by the official machinery provided by the Act. On this point the High Court remarked as follows:—

The Bengal Tenancy Act has introduced what may be called a system of public and official registry of transfers of permanent tenures, under which the landlord's fee has to be paid to, and the notice of transfer to be served on, him through the medium of the District Collector, while, under the law relating to *patni* tenures, the registration of transfers is of a private nature, as it has to be made in the *sherista* of the *zamindar*, and the prescribed fee has to be paid or tendered directly to him without the intervention of any public officer. If this dual system be in force, then the purchaser.....would have the option of following the procedure provided in section 13 of the Tenancy Act instead of proceeding under the *Patni* Regulation,—a procedure which is clearly in derogation of the right of the *zamindar*, under Regulation VIII. of 1819, to have the transfer registered in his books in accordance with the rules therein laid down, and which, therefore, affects an enactment which is specially saved from the operation of the Bengal Tenancy Act by section 195 (*e*) of that Act. We think, therefore, that section 13 of the

Tenancy Act does not apply to the present case, and that the rules laid down in Regulation VIII. of 1819 ought to have been observed by the purchaser, and, as they have not been observed, the plaintiff is entitled to a decree against the defendants.[1]

For the same reasons section 12 does not apply to *patni taluks* as sections 5, 6, and 7 of the Regulation, VIII. of 1819 apply to voluntary transfers of *patni* tenures, and not to transfers by sale in execution of decrees, or on succession.

Section 12 does not apply to patni tenures.

But both sections 12 and 13 have been held by a Full Bench of the High Court to apply to *darpatnis*, since section 195 (*e*) does not exclude *darpatnis* from the operation of this Act.[2] A *darpatnidar*, therefore, cannot sue for the registration of his name in the landlord's *sherista*[3] under sections 5 and 6 of Regulation VIII. of 1819.

Sections 12 and 13 apply to darpatni tenures.

14. *When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.*

Transfer of permanent tenure by sale in execution of decree for rent.

This section was repealed by Bengal Act I. of 1907, but not by E. B. Assam Act I. of 1908. The section was framed to expedite the conveying of this information about transfers to the Collector when a compulsory general registration of permanent tenures was in contemplation. But, this idea having been dropped (see page 101, *ante*,) the section is useless.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord, and the landlord's fee prescribed

Succession to permanent tenure.

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[1] *Gyanada Kantho Roy Bahadur* v. *Bromomoye Dassi* [1889], I. L. R., 17 Cal., at pages 167 and 168.

[2] *Mahomed Abbas Mandal* v. *Brojo Sundari Dabia* [1891], I. L. R., 18 Cal. 300.

[3] *Moti Lall Singh* v. *Omar Ali* [1898], 3 C. W. N. 19.

Ben. Act I., 1907; E. B. & A. Act I., 1908.

Ditto.

Ditto.

by section 12, [together with the costs necessary for its transmission to the landlord,] and the Collector shall cause the landlord's fee to be [transmitted] to, and the notice to be served on, the landlord [named in the notice] in the prescribed manner.

Objects of this section.

The objects of this section are to secure (1) to the landlord notice of the succession and tender of the landlord's fee, and (2) to the Collector early and accurate information to enable him to keep up an official Registry of permanent tenures. Neither object has, in fact, been attained, for the landlords generally refuse to accept the fees, and the Collector does not maintain an official Register of permanent tenures. See page 101, *ante*.

Form and service of notice.

The prescribed form of notice, and orders as to the manner of serving the notice will be found in Chapter V. of the Government Rules (reprinted in Appendix V., *post*).

Payment of landlord's fee to Registrar of Mutations.

It is provided by section 20 of the Land Records Maintenance Act, 1895 (Bengal Act III. of 1895), as follows:—

> The fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885, may be paid to the Registrar of Mutations when notice is given under section 6; and such payment shall be held to be payment to the Collector; and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector; and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.

This Act has admittedly been a failure.[1]

Penalty for failure to comply with section 15.

The penalty for failure to comply with the requirements of section 15 is stated in section 16, *post*.

Section 15 applies to patni tenures.

Section 15 applies to *patni* tenures—see note to section 16 next below.

Bar to recovery of rent pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover, by

[1] See "Muzaffarpur Final Report" by C. J. Stevenson-Moore, I. C. S., p. 405, para. 1058, *et. seq.*

suit, distraint, or other proceeding, any rent payable to him as the holder of the tenure until the Collector has received the notice, [fees, and costs] referred to in the last-foregoing section.

Ben. Act I., 1907; E. B. & A. Act I., 1908.

Suits for rent prior to giving notice of succession to Collector.

It has been held by the High Court that a suit may be instituted for the rent although the Collector has not received the notice and fees referred to in this section, but that the successor is barred from obtaining a decree until the Collector has received them.[1] Arrears of rent due to the deceased holder of a permanent tenure or to a deceased *patnidar* may, however, be recovered without the production, by the successor in interest, of a certificate showing that the Collector has received the notice and fees prescribed in section 15, inasmuch as the plaintiffs sue to recover, not as the owners of the tenure but as the representatives of the deceased holder, rent that fell due during the deceased's lifetime.[2]

Sections 15 and 16 apply to patni tenures.

Sections 15 and 16 apply to *patni* tenures.[3] Section 195 (*e*) lays down that nothing in this Act shall affect any enactment relating to *patni* tenures, so far as it relates to those tenures. As the Bengal *Patni Taluks* Regulation, VIII. of 1819, provides no procedure for registration of changes by succession, it follows that the application of this section would not affect anything in that Regulation, and therefore sections 15 and 16 apply to the registration of successions to permanent tenures by inheritance.

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

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[1] *Kalihar Ghosh* v. *Umai Patwari* [1896], I. L. R., 24 Cal. 241.

[2] *Sheriff* v. *Jogemaya Dassi* [1899], I. L. R., 27 Cal. 535; *Nogendra Nath Bose* v. *Sutadulbashini Basu* [1899], 3 C. W. N. 294.

[3] *Durga Prosad Bandopadhya* v. *Brindaban Roy* [1892], I. L. R., 19 Cal 504.

Landlord's consent required.

Section 88 provides that a division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or with that of his agent duly authorized in that behalf.

Application of sections 12, et seq., when landlord consents.

But, where the landlord consents to a division of a permanent tenure, or to a distribution of the rent, and a part, sub-divided with his consent, is transferred or inherited, the foregoing sections apply.

Where a tenure has been held by fractional co-sharers paying their shares of the rent separately with the landlord's consent, any of them may transfer his share without the landlord's consent, or a fractional share of which the rent has been separately paid with the landlord's consent may be inherited without such consent, because the transfer or succession in such cases would not involve any further sub-division of the tenure or distribution of the rent than had already been consented to. In cases of transfers or successions of this nature, the provisions of the foregoing sections would also apply.

It follows that—

(1) when a tenure is sub-divided with the landlord's consent, and a sub-divided portion is afterwards transferred or inherited, notice of the transfer or succession must be given, and the landlord's fee must be paid as prescribed in sections 12, 13, and 15; and

(2) where a fractional co-sharer in a permanent tenure, who has previously paid his share of the rent separately, transfers his share, the provisions of these sections also apply.

Legislation validating transfers made without payment of the landlord's fee.

The Inspector-General of Registration, acting on an opinion given by the Legal Remembrancer of the time, having issued a circular to the effect that the provisions as to the payment of landlord's fees under sections 12 and 13 did not apply to the transfer of shares of permanent tenures and of *raiyati* holdings

at fixed rates, many such transfers have heretofore been made without payment of the landlord's fee. Such transfers were invalid under the law as it formerly stood, but have now been validated by Bengal Act I. of 1903, section 1 (printed *ante*, page 100).

Heirs.

The heir of the transferee of a share of a permanent tenure is entitled to compel the landlord to recognize him under sections 15 and 17 of this Act if the tenure has been sub-divided with the landlord's consent.[1]

Transferee of part of a tenure.

The transferee of a part of a tenure is jointly liable with his co-sharer for the whole rent, for, although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure, though the transfer was of a part, by reason of the indivisibility of the tenure without the landlord's consent; but the purchaser of part of a tenure is not personally liable for rent which fell due before the date of the purchase. A suit for the rent of the whole tenure is not, however, bad because the transferee of a share is joined as defendant.[2]

Escheat.

A permanent tenure escheats to the Crown on failure of heirs of the tenure-holder,[3] and not to the heirs of the original grantor.

Relinquishment and abandonment of permanent tenures.

Sections 86 and 87 contain provisions relating to the surrender and abandonment of *raiyats'* holdings. There are no special provisions in the Act as to the surrender or abandonment of tenures.

It has been held by the High Court that the holder of a permanent tenure cannot surrender it at his option.[4] The contract, though not indissoluble, can only be dissolved by act of

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[1] *Ananda Kumar Naskar* v. *Hari Das Halder* [1900], I. L. R., 27 Cal., at p. 549.
[2] *Jagamaya Dasi* v. *Girindra Nath Mukerjee* [1900], 4 C. W. N. 590.
[3] *Sonet Koer* v. *Himmut Bahadur* [1876], I. L. R., 1 Cal., p. 391.
[4] *Hira Lall Pal* v. *Nilmani Pal* [1873], 20 S. W. R. 383.

the Court and after inquiry; and this principle applies to intermediate tenures.[1] If a permanent tenure is surrendered, and the *zamindar* accepts the surrender, neither the tenure-holder nor any one under him can reclaim it; and a voluntary relinquishment without any inevitable force, *ma,or* or other cause beyond the power of the holder, is equal to an express relinquishment.[2]

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[1] *Yadunath Ghose* v. *Schœne, Kilburn, & Co.* [1883], I. L. R., 9 Cal., p. 671.

[2] *Chandra Mani Nayabishan* v. *Sumbhu Chunder Chuckerbutty* [1864], S. W. R., Gap. No., 270.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Reference.

See section 4, *ante*, for classification of tenants; section 5, for definition of the term *raiyat;* and sections 10 to 17, for rights and liabilities of holders of permanent tenures.

Nomenclature.

Holdings at fixed rents or rates of rent are known by different names in different parts of Bengal.[1]

Principle.

Section 18 merely declares the general status of *raiyats* holding at fixed rates, and must be read with section 50, which embodies the rules and presumptions relating to fixity of rent.

Change in law.

Under the old law, fixed rates of rent meant, not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles; such, for instance, as a certain share of the

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[1] *See* Appendix IV. *infra*, and the following cases: *Jutto Moar* v. *Basumati Koer* [1871], 15 S. W. R. 479, *supra; Lall Sahoo* v. *Deo Narain Sing* [1878], I. L. R., 3 Cal. 781; *Telra Koer* v. *Bhaujan Rai* [1874], 21 S. W. R. 268; *Buti Sing* v. *Moorut Sing* [1873], 20 W. R. 478; *Chutterbhooj Bharti* v. *Janki Pershad Sing* [1879], 4 C. L. R. 29.

net produce of every *bigha* of land held by the *raiyat*, or such a sum of money as would give him any fixed rate of profit after payment of all the expenses of cultivation. *Id certum est quod certum reddi potest*, is a maxim of law[1]—*cf.* section 3 of Bengal Act VIII. of 1869. Under the old law, therefore, produce-rents,[2] the proportion of which was fixed invariably, came within the same category as money-rents. The framers of the present Act have departed from this principle. They have excluded produce-rents, however invariable the proportion payable to the landlord may be, from the category of fixed rents, "as, from their very nature, they are liable to fluctuations."

Clause (a)—Position of raiyats at fixed rates assimilated to to that of permanent tenure-holders.

By clause (*a*) of section 18, the position of a *raiyat* "holding at a rent or rate of rent fixed in perpetuity" is assimilated to that of the holder of a permanent tenure with regard to the transfer of, and succession to, his holding—the subjects which are dealt with in sections 10 to 17. The transfer of a holding, in order to be valid, must be by a registered document, subject to the conditions imposed by section 12. The holding of a *raiyat* occupying land at a fixed rent or rate of rent is liable to be sold in execution of a decree other than a decree for rent, but the sale will not be confirmed unless the requirements of section 13 are complied with. The amendment made by Bengal Act I. of 1903, sections 1 and 2 (*ante*, page 100), extends to these holdings. Transfers of such holdings, therefore, like transfers of permanent tenures, are hedged round with many formalities which have to be carefully borne in mind, for non-compliance with any one of them may give rise to serious questions regarding the validity

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[1] *Thakuranee Dasee* v. *Bisheshur Muherjee* [1865], B. L. R., Supp. Vol., 202 (Act X. of 1859): S. C., 3 W. R. 29 & 108 (Act X. of 1859).

[2] As to produce or *bhaoli* rents, see *Miterjeet Singh* v. *Tundun Singh* [1869], 12 S. W. R. 14: S. C., 3 B. L. R., App., 88; *Ramdayal Singh* v. *Luchminarayan* [1870], 6 B. L. R., App., 25: S. C., 14 S. W. R. 388; *Jatto Moar* v. *Basmati Koer* [1871], 15 S. W. R. 479; and *Hanuman Prosad* v. *Kaulessar Pandey* [1876], I. L. R., 1 All. 301 (F. B), *contra*—*Mahomed Yacoob Hossein* v. *Shaik Chowdhry Waheed Ali* [1865], 4 S. W. R. 23 (Act X., 1859): 1 Ind. Jur. 29. This is, however, disapproved of in *Ramdayal Singh* v. *Baboo Luchminarain* (*supra*). *Thakur Persad* v. *Mahomed Bakir* [1867], 8 S. W. R. 170.

of the transfer.[1] Similarly, in the case of a holding at a fixed rent or rate of rent devolving by succession, notice has to be given to the Collector in accordance with section 15, and the penalty provided by section 16 has effect if notice be not given. But, if the *raiyat* has no rent to recover, the penal provision of section 16 will, it seems, be of little consequence, although other disabilities would probably attach to the holding, which may make it desirable for him to comply with the requirements of the law.

Section 88 applicable to raiyats holding at fixed rates.

Like the tenure-holder (section 17), a *raiyat* holding at a fixed rent or rate of rent is subject to the provisions of section 88, which provides that a division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his written consent or that of his duly-authorized agent. The law thus recognizes the transfer of a share of a holding (subject to the provisions of section 88), and enables the transferee to claim to be regarded as one of the tenants in respect of the holding.[2]

A suit by the purchaser of a share of a *mukurrari* holding for a declaration that he is entitled to be regarded as one of the persons who own and possess the holding in question, the liability for the rent of the entire holding still continuing joint, is not opposed to the provisions of section 88.[3] *Semble.*—It would be otherwise if he asked that he should be declared to have purchased a specific share of the holding in question, and thereby to have become entitled to a holding consisting of that share, and liable only for a proportionate share of the entire rent.

Right to transfer or bequeath holdings at fixed rates not dependent upon local usage.

It may be observed here that clause (*d*) of sub-section (*3*) of section 178 does not apply to *raiyats* holding at fixed rates.

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[1] The High Court has ruled that the transfer of a permanent tenure is invalid if the requirements of the law are not complied with. This rule applies therefore to transfers of holdings of *raiyats* who come under section 18, but the change in the law made by Bengal Act I. of 1903 also applies to holdings at fixed rates.

[2] *Mohesh Chunder Ghosh* v. *Saroda Prosad Singh* [1893], I. L. R., 21 Cal. 433. *See* notes to section 17, *ante*.

[3] *Ibid.*

Under that clause the right of *raiyats* other than those coming under section 18, to transfer or bequeath their holdings, depends upon "local usage;" whereas these have an independent right quite apart from the usage prevailing in their locality.

Raiyat holding at fixed rent in better position than permanent tenure-holder in some respects.

In some respects a *raiyat* holding at a fixed rent occupies a better position than a permanent tenure-holder; for, although his crops may be distrained for arrears of rent under section 121 of the Act, he is not liable to enhancement like the holders of some permanent tenures.[1]

Ejectment of raiyats holding at fixed rates.

Clause (*b*) of section 18 restricts the right of the landlord to eject this class of *raiyat* from his holding to the case of a breach of a condition consistent with the Act on breach of which he had contracted that he should be subject to ejectment. In other words, the clause requires two elements before a *raiyat* holding at fixed rates can be ejected—(1) that there should be a condition in the contract between the parties, on breach of which he should be liable to ejectment; and (2) that the condition aforesaid should be consistent with the provisions of the Act, whether the contract was made before or after the commencement of the Act. It will be noticed that this latter reservation does not apply to permanent tenure-holders if the contract was made before the commencement of the Act (section 10, proviso).

For the period of limitation for a suit for ejectment based on the breach of a covenant in the contract, see art. 1 of Schedule III. to the Act, *post*.

A *raiyat* holding at fixed rates (like a permanent tenure-holder and a *raiyat* having an occupancy-right) is not liable to ejectment for arrears of rent;[2] and a condition rendering him liable to ejectment for arrears, if embodied in the contract by which the tenancy is created, would be null and void.

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[1] *See* notes to sections 7 to 9, *ante*.

[2] *See* sections 65 and 66, *post*.

It has been supposed that, if there be a covenant in the contract conditioning that a *raiyat* holding at fixed rates should be liable to ejectment for arrears of rent, such condition would be enforceable in law. This view, however, is not consistent with the provisions of section 65, *post*.

Although clause (*b*) of section 18 expressly confines the right of the landlord to eject *raiyats* holding at fixed rents to the breach of a condition in the contract (consistent with the Act) which makes him liable to be ejected, such *raiyats* are also entitled, like other *raiyats*, to the general protection afforded by section 89 and section 178, sub-section (*1*), clause (*c*), against capricious ejectments without the authority of law.

Before a suit for ejectment on the ground that the *raiyat* has broken a covenant which makes him liable to be ejected can "be entertained," the landlord has to comply with certain legal requirements.[1] If these conditions precedent are not complied with, the suit would be dismissed.

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[1] *See* section 155, *post*, and notes thereon.

Ben. Act I., 1907; E. B. & A. Act I, 1908.

[CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

Saving as to statements in instruments of transfer where landlord no party.

18A. Nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, amount or fixity of rent, area, transferability, or any incident of any tenure or holding referred to in such instrument

Saving as to acceptance of landlord's fees

18B. The acceptance by a landlord of any landlord's fee payable under Chapter III. or Chapter IV. in respect of any tenure or holding shall not operate—

(*a*) as an admission as to the permanence, amount or fixity of rent, area, transferability, or any incident of such tenure or holding, or

(*b*) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.]

Forfeiture of unclaimed landlord's fees. —Ben. Act I, 1907, only.

[**18C.** All landlord's fees paid under Chapter III. or Chapter IV., which are held in deposit on or after the commencement of the Bengal Tenancy (Amendment) Act, 1907,[1] may, unless accepted or claimed by

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[1] Bengal Act I. of 1907: Passed by the Lieutenant-Governor of Bengal in Council; received His Honour's assent on April 6, assented to by the Governor-General on May 11, and finally published in the *Calcutta Gazette* of May 22, 1907.

As no special date of commencement is given in this Act (Ben. Act I. of 1907), it must be assumed that it commenced on the date on which it was assented to by the Governor-General.

The provisions of Chapter IVA (which are virtually the same, both in Bengal and in E. B. & Assam) were introduced to allay the apprehensions of land-

the landlord within three years from such commencement, or from the date of the service of the notice prescribed in section 12, section 13, or section 15 (as the case may be), whichever is later, be forfeited to the Government.]

Forfeiture of unclaimed landlord's fees.—E. B. & Assam Act I., 1908, only.

[18C. All landlord's fees paid under Chapter III. or Chapter IV., which are held in deposit on or after the the commencement of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,[1] may, unless accepted or claimed by the landlord within three years from such commencement, or from the date of the service of the notice prescribed in section 12, section 13, or section 15 (as the case may be), whichever is later, be forfeited to the Government.]

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lords who feared that the acceptance by them of fees payable or transfers under Chapter III. or Chapter IV. would operate as an admission as to the permanence, etc., of the tenure or holding, or as an express consent under section 88, *infra*, to the division of the tenure or holding or the distribution of the rent payable in respect thereof.

Powers to make rules about landlords' fees under these Chapters are given by section 189 (*3*) and (*4*). *See* also Appendix V., Chapter V.

[1] Eastern Bengal and Assam Act I. of 1908 published in the *Eastern Bengal and Assam Gazette* of the 10th June 1908.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Continuance of existing occupancy-rights.

Ben. Act I., 1907, only.

Ditto.

19. (*1*) Every *raiyat* who, immediately before the commencement of this Act [or the Bengal Tenancy (Amendment) Act, 1907,[1]] has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act [or the Bengal Tenancy (Amendment) Act, 1907,[1]] comes into force, have a right of occupancy in that land.

Bengal Act I, 1907, only.

[(*2*) The exclusion from the operation of this Act, by a notification under sub-section (*3*) of section 1, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, or the inclusion of any area in the town of Calcutta by notification under section 637 of the Calcutta Municipal Act, 1899, shall not affect any right, obligation, or liability previously acquired, incurred, or accrued in reference to such area.]

E. B. Assam Act I., 1908, only.

[(*2*) The exclusion from the operation of this Act, by a notification under sub-section (*3*) of section 1, of any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area, shall not affect any right, obligation, or liability previously acquired, incurred, or accrued in reference to such area.]

See section 5 (*ante*) for definition of *raiyat*, and sections 13 and 48 of the Indian Evidence Act (I. of 1872). *Cf.* section 6 of Act X. of 1859[1] and section 6 of Bengal Act VIII. of 1869 (both repealed by the present Act). **References.**

A 'right of occupancy' is nowhere defined in this Act. It has been described elsewhere as a permanent lease, subject to the payment of a fair rent, unless held at a fixed rent. **Right of occupancy.**

Chapter V. is one of the most important portions of the Act, for it lays down the rules relating to the acquisition by the *raiyat* of a right of occupancy in the land which he cultivates or occupies. **Importance of Chapter V.**

In this connection it must be borne in mind that the soil of the Province is divided into two categories,[2] namely, (1) *raiyati* lands, in which a *raiyat* may, under the provisions of the law, and without the consent of his landlord, acquire those rights which derogate materially from the ordinary rights of ownership vested in proprietors; and (2) proprietor's private lands,[3] in which no occupancy-right can be acquired by a *raiyat*, if he has held such land under a lease for a term of years, or under a lease from year to year. It seems, however, that, by section 20, a *raiyat* can become a *settled raiyat* even in proprietors' private lands, as nothing in Chapter XI. restricts the accrual of that status in respect of any lands.

The provisions of sections 19 to 26 were extended to Orissa[4] by Notification dated 10th September 1891 printed in Appendix I. to this work, *infra*. **Orissa.**

Section 19 is retrospective in its operation. It preserves in express terms all rights of occupancy already acquired before the commencement of the Act, either under the provisions of any of **Intention of section 19.**

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[1] *Thakuranee Dassee* v. *Bisheshur Mukerjee* [1865], B. L. R., Supp. Vol., 202: 3 W. R. (Act X. Rulings) 29: S C., B. L. R., F. B., 326.

[2] *See* Ch. XI., *post*, and notes thereon.

[3] *See* secs. 116-120, *post*.

[4] Private lands in Orissa are known by various vernacular names, such as, *Nij-jote*, *Khamar*, *Khud-kasht*, *Nankar*, *Watan*, *Pilsah Watan*, and *Heta*, and *Majhas* in contradistinction to *Rajhas*.

the previous enactments, under custom, or otherwise. The remark which was made with regard to the object of Act X. of 1859, that it was intended to re-enact the provisions of existing laws relative to the rights of a *raiyat*,[1] applies to the section with which we are dealing.

Provisions of former law.

It becomes necessary, therefore, to examine the circumstances under which such rights could be acquired under the old law.

Section 6 of Bengal Act VIII. of 1869, which was identical with section 6 of Act X. of 1859, declared that—

> Every *raiyat* who shall have cultivated or held land for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under *patta* or not, so long as he pays the rent payable on account of the same; but this rule does not apply to *khamar*, *nij-jote*, or *sir* land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a *raiyat* having a right of occupancy. The holding of the father or other person from whom a *raiyat* inherits shall be deemed to be the holding of the *raiyat* within the meaning of this section.

A right of occupancy could be acquired not only by holding the land for the statutory period, but also by the custom of the locality. Section 19 of the present Act expressly saves all such rights. But the Courts have gone further and held that, apart from the provisions of section 19, where a right of occupancy had been acquired under the old Rent Act (Bengal Act VIII. of 1869, which is repealed by Act VIII. of 1885), such a right was not forfeited by the repeal, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired.[2]

Meaning of "custom" in this section.

The word "custom" in this section must be read in the light of sections 13 and 48 of the Indian Evidence Act (I. of 1872). Section 13 of that Act refers to all rights and customs, public, general, and private; section 48 deals with "general

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[1] *Rajah Leelanund Sing Bahadur* v. *Nirput Mahton* [1872], 17 W. R. 306.
[2] *Hurry Ram and another* v. *Nursing Lall* [1893], I. L. R., 21 Cal. 129.

customs or rights;" section 32, cl. (4), makes certain statements relating to any public right or custom relevant. The word "custom" in section 19 of the Bengal Tenancy Act means a public or general custom; for a right of occupancy which springs up from custom must be applicable to a general body before it can enure for the benefit of the individual. The word "otherwise" in this section includes contract, grant, prescription, &c. The section thus saves, not only the rights which were the direct creations of the Statute or of custom, but also such as came into existence by contract or grant.

Circumstances under which occupancy-rights were acquired under the old law.

Before dealing with the circumstances under which rights of occupancy were acquired under the former enactments, it is desirable to notice one important difference between the repealed enactments and the present Act. Under Act X. of 1859, as also under Bengal Act VIII. of 1869, a *raiyat* who had cultivated or held land, whether under a written contract or not, for twelve years, either himself or through any person from whom he had inherited the holding, was entitled to a right of occupancy therein, provided he paid the rent payable therefor. In other words, if he had not held the land for twelve years, and it had devolved on him by right of inheritance, he was entitled to add on the period during which it was held by the person from whom he had inherited the same. This, however, was subject to the reservation that no such right could be acquired in the private lands of the landlord held by the *raiyat* for a term of years or from year to year.[1] Under the old Acts (section 7) the *raiyat* could contract himself out of this right. In other words, an express stipulation in the *kabuliat* against the acquisition of a right of occupancy was valid, and debarred the *raiyat* from claiming the right under section 6. That is not so under the present Act. Section 178 makes three distinct declarations to prevent

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[1] *Thakuranee Dassee* v. *Bisheshur Mukerjee* [1865], B. L. R., Sup. Vol., 202: 3 W. R. (Act X. Rul.) 29; *see* also *Ishur Ghosh* v. *Hills* [1864], W. R., Sp. No. (F. B.). p. 148; and *Lilanund Singh* v. *Nirpat Mahton* [1872], 17 W. R., p. 306,

raiyats from contracting themselves out of the acquisition of occupancy-rights.[1]

Another point of difference between the old law and the present enactment is most important: Before Act VIII. of 1885 came into force, *raiyats* who cultivated or held the same land for the statutory period acquired a right of occupancy in that specific land, and *no other*, whether they were residents of the same village or not. Under the present law, a settled *raiyat* of the village obtains the right of occupancy in every piece of land he holds in the village subject to the limitations set forth in Chapter XI., *infra*, and, most important of all, every *raiyat* is presumed to be a settled *raiyat* until the contrary is proved—see section 20 (*7*), *post*.

Under the old law, a *raiyat* could acquire a right of occupancy in respect of land which he had held as a *bhagdar* for the full statutory period.[2] In many districts of Eastern and Central Bengal, a *raiyat*, instead of cultivating his holding himself, enters into an arrangement with another to cultivate the same, and gives him a share (*bhag*) of the produce. Hence the designation *bhagdari* right. The question relating to the status of a *bhagdar* under the present Act is *res integra*.

Under the old law a right of occupancy could be acquired in *utbandi* lands[3] if held continuously for 12 years. Similarly, under the present law also, such right can be acquired if the land has been held for 12 years continuously—see notes to section 180, and Appendix IV. to this work, *post*.

Acquisition of right of occupancy in homestead land.

As regards a right of occupancy in homestead lands under the old law, a cultivator could acquire the right equally in that portion of the land which he used for his habitation as in that which he cultivated[4] subject to this limitation—that the tenure

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[1] *See* notes to s. 178, *post*.

[2] *Harihar Mookerji* v. *Bireshur Banerji* [1865], 6 W. R. 17 (Act X.); *Jatto Moar* v. *Basmuttee Koer* [1871], 15 W. R. 479.

[3] *Prema Nand Ghosh* v. *Surendra Nath Rai* [1873], 20 W. R. 329.

[4] *Mohesh Chunder Gangopadhya* v. *Bishonath Das* [1875], 24 W. R. 402.

of the land was *raiyatwari*, in other words, that it was not the private land of the landlord.[1] But, if the homestead land did not form part of an agricultural holding, he had no rights of occupancy, and the Rent Law did not apply; his rights thereto were governed by the contract. Under the present Act, (1) if the homestead be part of an agricultural holding, the tenant gets the full benefit of the Act; and (2), if not part of an agricultural holding, he gets the benefit of the Act subject to local custom or usage.[2]

In land occupied for shops or dwelling houses or other buildings.

If, instead of cultivating the land, the *raiyat* chose to erect shops thereon, and to receive the profit from the shopkeepers, he still acquired a right of occupancy.[3]

At the same time, the original purpose of the tenancy was to be kept in view. If the land was occupied mainly for dwelling purposes, or, in other words, if the dwelling-house was the main object of occupation, and the cultivation of the soil, if any, was entirely subordinate thereto, no right of occupancy could be acquired.[4]

Similarly, although a *raiyat*, who had taken a lease of land for cultivating purposes, might afterwards convert it into a site for a shop, and yet acquire a right of occupancy therein, the principle was not applicable to such lands as were occupied exclusively by buildings.[5]

These reservations, which sometimes assumed an anomalous aspect, gave rise to great difficulties; and one of the objects of the legislation of 1885 was to place the law relating to *bastu* or homestead land on an intelligible and uniform basis.

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[1] *Pogose* v. *Raja Dhopi* [1874], 22 W. R. 511.
[2] S. 180, *post*.
[3] *Khajurunnissa Begum* v. *Ahmed Reza* [1869], 11 W. R. 88.
[4] *Kali Krishna Biswas* v. *Janki* [1867], 8 W. R. 250; *Ramdhan Khan* v. *Haradhan Poramanick* [1869], 12 W. R 404: S. C., 9 B. L. R. 107, note.
[5] *Mohar Ali Khan* v. *Ram Ratan Sen* [1874], 21 W. R. 400.

In land let for grazing.
In tank.

An occupancy-right could also be acquired in land let for grazing horses,[1] and in a tank appurtenant to land let for cultivation.[2] But no such right could be acquired where the tank was used only for the preservation and rearing of fish, and did not form part of any grant of land or an appurtenance to land,[3] or where the land attached to it was only so much as was necessary for its banks.[4]

In jalkar.

For analogous reasons, section 6 of Act X. of 1859 and section 6 of Bengal Act VIII. of 1869 were not applicable to *jalkar* or a mere fishing right.[5]

Person acquiring occupancy-right need not be a bona fide cultivator.

Nor did the law require that a person, in order to acquire the right, should be a *bonâ-fide* cultivator. A member of a firm owning an indigo concern, who took a cultivating lease of land, could acquire a right of occupancy.[6] But, the concern having no corporate existence,[7] a firm of capitalists taking a lease of land could not acquire a right of occupancy.[8] The acquisition of the right was not dependant upon the *raiyat's* personal cultivation: whether he let out the land to others for purposes of cultivation, taking from them a share of the produce by way of profit, or whether he had it cultivated by members of his family, or by labourers, his position was the same.[9]

Right of occupancy in lands taken for horticultural purposes.

As already mentioned, a person who held land for the statutory period as an orchard acquired therein a right of occupancy under the old law. It does not appear that the present Act has made any variation in this rule. In fact, it has been held that

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[1] *Fitzpatrick* v. *Wallace* [1869], 2 B. L. R. (A. C.) 317: S.C., 11 W. R. 231.
[2] *Nidhi Krishna Basu* v. *Ram Dass Sen* [1875], 20 W. R. 341.
[3] *Shibu Jelia* v. *Gopal Chandra Chaudhri* [1873], 19 W. R. 200.
[4] *Nidhi Krishna Basu* v. *Ram Dass Sen* [1873], 20 W. R. 341.
[5] *Uma Kanth Sarkar* v. *Gopal Singh* [1865], 2 W. R. (Act X) 19; *Sham Narain Chaudhri* v. *The Court of Wards* [1875], 23 W. R. 432; *Jaggabandhu Saha* v. *Promotho Nath Roy* [1879], I. L. R., 4 Cal. 767; *Bollai Sati* v. *Akram Ali* [1879], I. L. R., 4 Cal. 961.
[6] *Laidley* v. *Gour Govind Sarkar* [1885], I. L. R., 11 Cal. 501.
[7] *Cannon* v. *Chandra Rai* [1876], 25 W. R. 117.
[8] *Rai Komal Dossee* v. *Laidley* [1879], I. L. R., 4 Cal. 957.
[9] *Brindabun Chandra Chaudhri* v. *Issar Chandra Biswas* [1864], W. R., Sp. No., 1864 (Act X.), 1; *Ram Mangal Ghosh* v. *Lakhi Narain Shaha* [1864], 1 W. R. 71; *Kali Charan Singh* v. *Amiruddin* [1868], 9 W. R. 579.

the definition of '*raiyat*' in this Act is not exhaustive, and that there is nothing in that definition which would exclude a person who had taken land for horticultural purposes.[1]

Mere reservation of a right of re-entry did not bar accrual of right.

The mere reservation of a right of re-entry on the part of the landlord, unless it amounted to an express stipulation under section 7 of Act X. of 1859, by which the *raiyat* contracted himself out of the benefit of that Act, did not bar the accrual of the right; and a *raiyat* who held under a succession of *pattas*, each for shorter periods than twelve years, but whose occupation in the aggregate amounted to more than the statutory period, was held entitled to a right of occupancy.[2]

Nor did the fact of his taking a lease for a term of years affect the growth of the right on the lapse of the statutory right. Thus a *raiyat* allowed to continue in occupation of the land on the expiry of a lease by which a right of re-entry at the end of its term had been reserved, but which right was not exercised, and whose total period of occupation amounted to twenty years, was held to have acquired a right of occupancy.[3]

Addition of period of occupation by predecessor.

In computing the period of twelve years required for the acquisition of a right of occupancy, *raiyats* were entitled to add to their own possession the time during which the person from whom they inherited the land had been in occupation.[4] And whether the land was in the sole and exclusive possession of the *raiyat*, or was held jointly with others, he was entitled to the benefit of the possession for the purpose of the accrual of the occupancy-right.[5] These principles form part of the present law.

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[1] *Hurry Ram* v. *Narsingh Lal* [1893], I. L. R., 21 Cal. 129.

[2] *Sheo Prokash Misra* v. *Ram Sahai Sing* [1871], 17 W. R. 62: S. C., 8 B. L. R. 165; *Narain Sing* v. *Mansoor Raout* [1876], 25 W. R. 155; *Mukhtar* v. *Brajraj Singh* [1881], 9 C. L. R. 143; *Chandrabuti Koer* v. *Harrington* [1890], I. L. R., 18 Cal. (P. C.) 349: S. C., L. R., 18 I. A. 27.

[3] *Ibatullah* v *Mahomed Ali* [1876], 25 W. R. 114.

[4] *Watson* v. *Sarat Sundari Debi* 1867], 7 W. R. 395; *Nim Chand Biruah* v. *Murari Mandal* [1867], 8 W. R. 127; *Lal Bahadoor Sing* v. *Solano* [1883], I. L. R., 10 Cal. 45: S. C., 12 C L. R. 559.

[5] *Forbes* v. *Ram Lall Biswas* [1874], 22 W. R. 51. But see *Mahomed Charnan* v. *Ram Prosad Bhagut* [1872], 8 B. L. R. 338: S. C. [1872], 22 W. R. 52-note.

Tenants could acquire rights of occupancy under persons having no title.

Tenants could acquire rights of occupancy even although the person or persons under whom they held the land had no title to it.[1] Accordingly, if a person in wrongful possession of land let it out to a *raiyat* who held it for the full statutory period upon payment of rent, the *raiyat* acquired the statutory right. Similarly, if he was inducted upon the land by a lessee or *ijaradar*, the expiration of the latter's lease in no way affected the accrual of the right in favour of the *raiyat* under section 6 of Act X. of 1859.[2]

Other cases.

Under the old law, a right of occupancy could be acquired in respect of an undivided share of an estate.[3] And the law recognized the acquisition of a right of occupancy even in private lands of the landlord's *nij-jot*, *khamar*, or *sir*, provided they were let out otherwise than for a term or year by year.[4] If so let out, the presumption arose that the landlord intended to keep his rights intact over the land.[5]

When once the period has begun to run in favour of the *raiyat*, it is only by his own act that it can cease to have effect.

Wrongful eviction by landlord does not prevent accrual of right.

Wrongful eviction by the landlord is not such an interruption of possession as would prevent a *raiyat* from acquiring a right of occupancy.[6]

Further references.

Regarding the acquisition of occupancy-rights under the old law, see also the undermentioned cases,[7] and *cf.* section 183, III. (*2*), and section 113, of the present Act, *post*.

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[1] *Amir Hassan* v. *Sheo Sahai* [1873], 19 W. R. 338; *Zulfan* v. *Radhika Prasana Chandra* [1878], I. L. R., 3 Cal. 560: S. C., 1 C. L. R. 383.

[2] *Gholam Panja* v. *Harish Chunder Ghosh* [1872], 17 W. R. 552.

[3] *Mukta Keshi Dasi* v. *Kailash Chandra Mitra* [1867], 7 W. R. 493; *Jardine, Skinner, & Co.* v. *Sarat Sundari Debi* [1878], 3 C. L. R. 140: S. C., L. R., 5 I. A. 164

[4] *Gourhari Singh* v. *Bihari Raoot* [1869], 12 W R. 277: 3 B. L. R. (App.) 138; *Bhugwan Bhagat* v. *Jugmohun Rai* [1873], 20 W. R. 308; *Ashraf* v. *Ram Kishore Ghosh* [1875], 23 W. R. 288.

[5] *Cf.* s. 116, *post*.

[6] *Mohamed Ghazi Chowdhri* v. *Nur Mohamed* [1875], 24 W. R. 324; *Lutifunnissa* v. *Pulin Behari Sen* [1863], W. R., Sp No., F. B., 91; *Radha Govind Koer* v. *Rakhal Das Mukher* [1885], I. L. R., 12 Cal. 82.

[7] *Thakurani Dassi* v. *Bisheshur Mukherji* [1864], B. L. R., Sup. Vol., 202: 3 W. R. (Act X.) 29; *Hills* v. *Ishwar Ghose* [1864], W. R., Sp. No. (F. B.), 148; *Lilanund Singh* v. *Nirput Mahtoon* [1872], 17 W. R. 306.

But, although rights of occupancy could be acquired under a person having no title in the land, a trespasser himself could not acquire any such right.[1] In order to have the benefit of the enactment, he must be in *bonâ-fide* possession upon payment of rent. Accordingly a *raiyat* who secretly possesses himself of land, and pays no rent for it, has no right of occupancy in that land.[2]

Trespasser does not acquire right.

Nor can possession obtained and continued by fraud create any right of occupancy.[3] A mere licensee whose possession is of a permissive character, not founded upon any right,[4] or who happened to be in occupation of land for twelve years, could not, under the old law, nor can he under the present Act, claim the right.[5] The same rule applied to a person occupying land as an assignee of the *zamindar* and cultivating because of the opportunity thus afforded to him,[6] to a middleman,[7] to a *thikadar*,[8] and to a mortgagee holding under a *zar-i-peshgi* constituting a security for money advanced.[9] Nor could rights of occupancy be acquired in lands sublet for a term or year by year by *raiyats* having occupancy-rights;[10] nor, apparently, in land held

Possession obtained and continued by fraud, etc., does not create a right of occupancy.

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[1] *Pir Baksh* v. *Meahjan* [1864], W. R., Sp. No. (F. B.), 146; *Ghulam Haidar* v. *Purno Chandra Rai* [1865], 3 W. R., Act X., 147; *Ishan Chandra Ghosh* v. *Harish Chandra Banerjee* [1872], 18 W. R. 19: 10 B. L. R., App., 5; *Bhuban Joy Acharjee* v. *Ram Narain Chowdhuri* [1868], 9 W. R. 449; *Hurro Gobind* v. *Ram Ruttun* [1878], I. L. R., 14 Cal. 67.

[2] *Gharib Mandal* v. *Bhuban Mohan Sen* [1865], 2 W. R., Act X., 85.

[3] *Bhuban Joy Acharjee* v. *Ram Narain Chowdhuri* [1868], 9 W. R. 449.

[4] *Mohar Ali Khan* v. *Ram Ruttun Sen* [1874], 21 W. R. 400; *Addoyto Churn De* v. *Peter Das* [1872], 17 W. R. 383.

[5] *Umamayi Barmanya* v. *Boko Behra* [1870], 13 W. R. 333.

[6] *Uma Nath Tewari* v. *Kundan Tewari* [1873], 19 W. R. 177.

[7] *Gopimohan Rai* v. *Sib Chandra Sen* [1864], 1 W. R. 68.

[8] *Ram Saran Sahu* v. *Veryag Matan* [1876], 25 W. R. 554; *Lala Issur Dutt* v *Bhaka Chowdhary* [1872], 17 W. R. 242; *Thomas Savi* v. *Punchanun Roy* [1876], 25 W. R. 503.

[9] *Bengal Indigo Co.* v. *Roghubur Das* [1896], I. L. R., 24 Cal. 272: S. C., L. R., 23 I. A. 158: 1 C. W. N. 83.

[10] *Gilmore* v. *Sarbessari Dasi* [1864], W. R., Sp. No. (Act X.) 72; *Jamiatunnissa Bibi* v. *Nur Mahomed* [1864], *ibid*, 77; *Ketal Gain* v. *Nadir Mistri* [1866], 6 W. R. 168; *Abdul Jabar* v. *Kali Charan Datta* [1867], 7 W. R. 81; *Kali Kishore Chaturji* v. *Ram Charan Shah* [1868], 9 W. R. 344; *Haran Chander Pal* v. *Mukta Sundari* [1868], 10 W. R. 113: S. C., 1 B. L. R. (A. C.) 81; *Ram Dhan Khan* v. *Hara Dhan Paramanick* [1869], 12 W. R. 404: S. C., 9 B. L. R. 107-note; *Nil Komul Sein* v. *Danesh Shaikh* [1871], 15 W. R. 469; *Ishan Chandra Ghosh* v. *Harish Chandra Banerjee* [1872], 18 W. R. 19; *Annapurna Dasi* v. *Radhamohun Pattro* [1873], 19 W. R. 95.

under a service-tenure,[1] for a distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment.

Addition of period of occupation by predecessor.

In computing the statutory period of twelve years necessary for the acquisition of occupancy-rights, the *raiyats* were and still are entitled to add to their possession the period during which the holding has been in the occupation of (1) persons from whom they have inherited the lands, or (2) their transferors, if the *jotes* are transferable, but not otherwise,[2] even with the consent of the landlord.[3]

Definition of "settled raiyat."

20. (*1*) Every person who, for a period of twelve years, whether wholly or partly, before or after the commencement of this Act, has continuously held as a *raiyat* land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled *raiyat* of that village.

(*2*) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a *raiyat* any land held as a *raiyat* by a person whose heir he is.

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[1] Although the question was not expressly decided in *Haro Gobind Raha* v. *Ram Ratno Dey* [1878], I. L. R., 4 Cal. 67, it is clear from the judgment that the view expressed here is a consequence of the reasoning of the learned Judges.

[2] *Watson* v. *Sarat Sundari Debi* [1867], 7 W R. 395; *Dinobundhu Dey* v. *Ram Dhone Roy* [1868], 9 W. R. 522; *Durga Sundari* v. *Brindabun Chundra Sarkar* [1869], 11 W. R. 162; *Narendra Narain Rai* v. *Ishan Chandra Sen* [1874], 22 W. R. 22: S. C., 13 B. L. R. 274; *Khirod Chundra Rai* v. *Gordon* [1874], 23 W. R. 237; *Lal Bahadoor Sing* v. *Solano* [1883], I. L. R., 10 Cal. 45: S. C., 12 C. L. R. 559.

[3] *Tara Pershad Roy* v. *Surjo Kant Acharji* [1871], 15 W. R. 152; *Hyder Buksh* v. *Bhubendro Deb Kunwar* [1872], 17 W. R. 179: the view expressed in *Haro Chandra Guha* v. *Dunn* [1866], 5 W. R. (Act X.) 55, does not seem to have been recognized.

(4) Land held by two or more co-sharers as a *raiyati* holding shall be deemed, for the purposes of this section, to have been held as a *raiyat* by each such co-sharer.

(5) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village, and for one year thereafter.

(6) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

Former law.

Cf. section 6 of Act X. of 1859 and section 6 of Bengal Act VIII. of 1869.

Under the Mogul Government, the actual cultivators of the soil were grouped under two heads, *viz.*, *khudkasht raiyats* and *paikasht raiyats*, and this division was recognized and continued after the establishment of the British Administration.[1]

Resident raiyats.

Act VIII. of 1885 (the present law) aimed at the restoration,[2] to some extent at least, of the status of the resident, or, to use

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[1] As to the status of *Khudkasht* and *Paikasht raiyats*, see Introduction, pp. 4 to 6, *ante*.

[2] Regulation I. of 1793, s. 8, cl. (*1*), expressly reserves to the Governor-General in Council the power to make such regulations and laws as might be necessary for the protection of the *raiyat*.

the phraseology of the Act, the *settled raiyat.* The Act does not make any distinction between a resident and a non-resident *raiyat.* Every person who holds any land in a village for twelve years is, under this Act, a *settled raiyat* of the village, whether he resides in it or not. A person may be a *settled raiyat* in more villages than one.

References. *Cf.* section 3, clause (*10*)—"*village*"; section 5 (*2*)—"*raiyat.*"

Principle. Section 20 prescribes the mode by which a cultivator might become a settled *raiyat* of a particular village, while the succeeding sections deal with his rights and *status.* Read with section 5, sub-section (*2*), it will be noticed that section 20 effects an important alteration in the rent-law of the province.

Difference between the old and the present law. Under Act X. of 1859 and Bengal Act VIII. of 1869, it was necessary for a *raiyat* to have been in occupation of the *same* land for the statutory period of twelve years before he could acquire a right of occupancy;[1] and, if he took up fresh land in the village, the fact, that he had some other land in the village for more than twelve years, did not give him any right of occupancy in his new acquisition till he had held it for twelve years. Landlords sometimes took advantage of the law, and prevented *raiyats* from acquiring a right of occupancy by changing the lands of their holdings before the expiration of the statutory period. This device has been put a stop to by Act VIII. of 1885. Under the present law, in order to become a settled *raiyat* of the village, a *raiyat* must have held "as a *raiyat*" some land in the village, continuously for a period of twelve years, wholly or partly, before or after the commencement of the Act, and either under a lease or otherwise. It is not necessary, therefore, that he should continuously hold the *same* land.

The objects of the important alteration made in the law by section 20 were (1) to rehabilitate the *raiyat* in his "established hereditary right in the land he cultivates, so long as he continues

[1] *Amar Chand Lahatta* v. *Bakshi Paikar* [1874], 22 W. R. 228.

to pay the rent justly demandable from him with punctuality,"[1] and (2) to give reasonable security to him in the occupation and enjoyment of his land.[2]

Sub-section (2).

The language of sub-section (*2*) of section 20 has occasioned some doubt whether the holding of different plots making up the aggregate period should be under the same landlord. From the phraseology of the enactment, however, it seems to be clear that a cultivator holding different plots of land under different landlords in the *same village* for the statutory period fulfils the condition required by the law.

But this rule does not apply to *chur* or *dearah* land, or to land held under the custom of *utbandi*, which must still be held for twelve years before a right of occupancy can be acquired therein.[3] Nor does it create a right of occupancy in favour of a *raiyat* who has the landlord's private lands under contracts for a term of years, or from year to year. See sections 116 and 180, *post*.

Cultivation by raiyat himself not necessary for acquisition of right:

Following the former law,[4] it is not necessary that the *raiyat* should himself cultivate the land in his occupation. If the land is acquired primarily for that purpose, cultivation carried on by

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[1] *See* Bengal Government Letter No. 972R. dated 27th September 1893, para. 11—Selections, p. 213; Secretary of State's Despatch 54 dated 17th August 1882, para. 6—Selections, p. 33; and para. 9 of the Introduction to this work at p. 6, *supra*.

[2] Sir Courtenay Ilbert's speech on introducing the Bill—Selections, p 50.

[3] *See* section 180, *post*. The word "land" has not been defined in the Act although a definition was proposed by the Rent Commission, which ran as follows:—

"'Land' includes woods and water thereupon: when applied to land cultivated or held by a *raiyat*, it means land used, or intended to be used, for agricultural or horticultural purposes or the like. In Ch. XVIII., it means (*a*) tenures, under-tenures, and holdings; (*b*) land used, or let to be used, for agriculture, horticulture, pasture, or other similar purpose, or for dwelling-houses, manufactories, or other similar buildings; and (*c*) rights of pasturage, forest-rights, fisheries, and the like. *Explanation.—Bastu* or homestead land is land used for agricultural purposes when it is occupied by a *raiyat*, and together with the land cultivated by such *raiyat* forms a single holding."—*See* clause 3 of Bill annexed to Rent Commission's Report (*Gazette*, p. 139).

The attempt to define "land" was abandoned in view of the difficulties to which any definition would give rise. S. 5 of the present Act supplies, in sub ss. (*2*) and (*4*), more elastic principles for the guidance of the Courts.

[4] *Mungul Ghose* v. *Lukhy Narain Shaha* [1864], 1 W. R. 71; *Karoo Lall Thakoor* v. *Luchmiput Doogur* [1867], 7 W. R. 15.

any one of the methods indicated in section 5, sub-section (*2*), would impress on him the status of a settled *raiyat* of the village; in other words, so long as he does not sever himself entirely from the cultivation of the land, and make himself a mere receiver of rent, he retains the character of a *raiyat*.

It will be noticed that mere possession is not sufficient.

Under the old law the possession of a trespasser or a middleman,[1] or of a person who held not in his own right, but merely as a servant of another,[2] or as an under-*raiyat*,[3] was not regarded as giving rise to a right of occupancy, nor did the possession of a lessee (*mustajir*[4] or *thikadar*[5]), however long-continued,[6] or of a co-sharer holding under other co-sharers,[7] give birth to that right. These principles, save as regards the under-*raiyat*, are continued by the present Act. See section 183, Illustration (2).

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[1] *Shaik Pir Baksh* v. *Shaik Meeahjan* [1864], W. R., Sp. No. (F. B.), 146; *Gopee Mohun Roy* v. *Sheeb Chunder Sen* [1864], 1 W. R. 68; *Ghulam Haidar* v. *Purno Chandra Rai* [1865], 3 W. R. (Act X.) 147; *Sm. Uma Sundari* v. *Kishori Mohun* [1867], 8 W. R. 238; *Kali Krishna* v. *Sashonee Dasi* [1875], 25 W. R. 42; *Ishan Chunder* v. *Hurrish Chunder* [1872], 10 B. L. R. (App.) 5: [1872], 18 W. R. 19; *Meher Ali Khan* v. *Ram Ruttun* [1874], 21 W. R. 400; *Addoyto Churn* v. *Peter Das* [1872]. 17 W. R. 383; *Kabeel Shaha* v. *Radha Kissen* [1871], 16 W. R. 146; *Garub Mundle* v. *Bhuban Mohun* [1865], 2 W. R. (Act X.) 85; *Bhuban Joy Acharjee* v. *Ram Narain Chowdhuri* [1868], 9 W. R. 449; *Hurro Gobind* v. *Ram Ruttun* [1878], I. L. R, 4 Cal. 67; *Umamoye* v. *Boko Behara* [1870], 13 W. R. 333; *Amar Chand Lahatta* v. *Bakshi Paikar* [1874], 22 W. R. 228; *Nimchand Borooah* v. *Mooraree Mundle* [1867], 8 W. R. 127; *Forbes* v. *Ram Lal Biswas* [1874], 22 W. R. 51; *Mohamed Rasi Chowdhry* v. *Noor Mohamed* [1875], 24 W. R 324; *Radha Gobind Koer* v. *Rakhal Das Mukerji* [1885], I. L. R., 12 Cal. 82.

[2] *Umamoye* v. *Boko Behara* [1870], 13 W. R. 333.

[3] *Ketal Gain* v. *Nadar* [1866], 6 W. R. 168; *Moulvi Abdul Jubbar* v. *Kalee Churn* [1867], 7 W. R. 81; *Haran Chunder* v. *Mukta Sundari* [1868], 1 B. L. R. (A. C.) 81: s c. [1868], 10 W. R. 113; *Nil Komul* v. *Danesh Shaik* [1871], 15 W. R. 469; *Unnapurna* v. *Radha Mohun* [1873], 19 W. R. 95; *Gilmore* v. *Surbeshuri* [1864], W. R., Sp No. (Act X.), 72; *Hureehur* v. *Jodunath* [1867], 7 W. R. 114; *Ishan Chunder* v. *Hurrish Chunder* [1872], 18 W. R. 19; *Kalee Kishore* v. *Ram Churn* [1868], 9 W R. 344; *Ram Dhone Khan* v. *Harradun* [1869], 12 W R. 404.

[4] An Arabic word derived from the same root as *Ijara*.

[5] A Hindi-Persian word, meaning a person who holds a temporary interest in anything from which profit is derived.

[6] *Wooma Nath* v. *Kundun Tewary* [1873], 19 W. R. 177; *Hurrish Chunder* v. *Alexander* [1863], Marsh. 479.

[7] *Lalla Ishur Dutt* v. *Bhaka Chowdhry* [1872], 17 W. R. 242; *Ramsaran* v. *Veryag Mahton* [1876], 25 W. R 554; *Thomas Savi* v. *Punchanon Roy* [1876], 25 W. R. 502; *Mokoondy Lall Doobey* v. *Crowdy* [1872], 17 W. R. 274.

In accordance with the old law,[1] the actual payment of rent does not seem to be a necessary element in the constitution of the *status*. The land may be held under a continuous lease or under leases renewed from time to time, but in the aggregate the occupation must amount to the statutory period.

Nor actual payment of rent.

The provisions of sub-section (*3*) are identical in their scope and effect with those of the concluding paragraph of section 6 of Act X. of 1859 and section 6 of Bengal Act VIII. of 1869, which declared that the holding of the father or other person from whom a *raiyat* inherits shall be deemed to be the holding of the *raiyat* within the meaning of the section. A *raiyat* is, therefore, entitled to add to his own occupation the period during which the holding was in the possession of the person from whom he derives title by inheritance, but *not* by purchase.

Sub-section (3).

The holding of a person from whom the raiyat inherits or purchases.

It has already been observed that section 20 provides the mode by which the status of a settled *raiyat* may be acquired, while the rights which spring up on the acquisition of that *status* are dealt with in later sections.[2] It will be noticed that every settled *raiyat* has occupancy-rights; but every *raiyat* having rights of occupancy need not necessarily be a settled *raiyat* of the village where his holding is situate.[3] An occupancy-right may be acquired by purchasing a transferable occupancy-holding; but the status of a settled *raiyat* in a village can only be acquired by holding some land as a *raiyat* in the village for twelve years.

Settled raiyats and occupancy-rights.

Sub-section (*4*) refers to *raiyats* in joint occupation of land as a *raiyati* holding. In other words, the *status* of a settled *raiyat* is acquired by a cultivator who has held any land in the particular village for twelve years continuously, either by himself, or jointly with others, for the whole period or part of the time. This is in accordance with the old law.[4]

Sub-section (4).

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[1] *Narain Roy* v. *Opnil Misser* [1882], 11 C. L. R. 417.
[2] Ss. 21 to 26, *post*.
[3] *Kuldip Singh* v. *Chatur Singh* [1898], 2 C. W. N. cccii.
[4] *Forbes* v. *Ram Lall Biswas* [1874], 22 W. R. 51, overruling *Chaman* v. *Pershad Bhukut* [1872], 8 B. L. R. 338.

Sub-section (4).

Sub-section (4) does not support the contention that an occupancy-holding should be regarded as a joint tenancy with the effect that a relinquishment of their shares by some of the co-sharers would enlarge the shares of the others.[1]

Sub-section (5).

The *status* once acquired is not lost by mere abandonment of the holding and removal from the village unless the absence from the village last for more than a year. So that a settled *raiyat* who has given up his holding and removed to another locality, if he returns to the village within the space of one year, and takes up another holding, although under a different landlord, would not lose his *status*.[2]

Sub-section (6). Eviction by landlord: Period during which raiyat is kept out of possession counts in his favour.

If a *raiyat* holding land in a particular village is evicted by his landlord, and he recovers possession under the provisions of section 87 of the Act, the period during which he was so out of possession will count in his favour, even though it may exceed a year. Under the old law it was held that interruption of occupation caused by wrongful ouster by the landlord did not prevent the accrual of the right of occupancy.[3] But the onus of proving that the eviction was wrongful was upon the *raiyat*.

Voluntary abandonment.

Under the present law (section 87), the Court has, in a suit for recovery of possession brought by the *raiyat* against the landlord within the period of limitation provided therefor, to be satisfied that he did not "voluntarily abandon his holding." Of course, the question relating to the character of the eviction, *i.e.*, whether it is wrongful or not, may incidentally form the subject of inquiry; but the main issue in such a case would be whether the abandonment was voluntary or not. Where a *raiyat* had not only sold his hut and removed with his family to another village, but had also purported to assign his non-transferable holding to another without any intimation to his landlord, it was *held* by

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[1] *Peary Mohun Mondal* v. *Radhika Mohun Hazra* [1903], 8 C. W. N. 315.

[2] *See* ss. 86 and 87, *post*.

[3] *Mahomed Gazi Chaudhri* v. *Nur Mahomed* [1875], 24 W. R. 324; *Latifunnissa* v. *Pulin Behary Sen* [1863], W. R., Sp. No. (F. B.), 91; *Radha Gobind Koer* v. *Rakhal Dass Mookerjee* [1885], I. L. R., 12 Cal. 82.

the High Court, in a suit[1] by the assignees against the tenants settled by the landlord, that there had been a voluntary abandonment.

Sub-section (7): Presumption of continuous holding in favour of the raiyat.

In view of the difficulty under which *raiyats* ordinarily laboured in giving evidence of the continuity of their holding, the Legislature has deliberately enacted that, "if, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall, as between him and the landlord under whom he holds the land, be presumed" that he has held it continuously for twelve years, the *onus* being on the landlord to establish the contrary; for it is perfectly easy for the landlord to show when the occupation commenced, and thus to establish the affirmative form of the proposition that the *raiyat* has not held for twelve years. This presumption applies to a proprietor's private land as well as to ordinary *raiyati* land.

Settled raiyats to have occupancy-rights.

21. (*1*) Every person who is a settled *raiyat* of a village within the meaning of the last-foregoing section shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

(*2*) Every person, who, being a settled *raiyat* of a village within the meaning of the last-foregoing section, held land as a *raiyat* in that village at any time between the 2nd day of March 1883 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act,

References.

Cf. section 5 (*2*)—"*raiyat*;" section 20—"settled *raiyat*;" sections 116 and 180, *post*, and Bengal Government's Letter No. 972T. R. dated the 27th September 1883.[2]

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[1] *See* notes to s. 87, *post*.

[2] Selections, p. 207.

Principle.

This section declares the privileges attached to the status of a settled *raiyat*, which are the same, as regards the right of occupancy, as those possessed by the old *khudkasht raiyat*, who, if he took up fresh land in the same village, held it on the same tenure as the old. In those times there was a larger margin of waste in all villages; the resident cultivator had the fresh land at his door. There is now but little margin of waste in any village of the settled districts, and therefore the *raiyat*, if he wants to add to his holding, cannot always succeed in doing so. That he should, however, if successful in his quest (and he can only succeed with the consent of his landlord), hold such additional land in the same *status*, and by the same title, as his original holding, is only a rational development of an old customary law of the country to suit the modern wants.

Policy of Act VIII. of 1885.

Although Act VIII. of 1885 is by no means exhaustive,[1] it must be noted that its main policy is to regulate the relationship of landlords and tenants with respect only to agricultural lands, and it does not apply to lands in towns, or in the suburbs of towns. "There is no authority for the proposition that there may be rights of occupancy in suburban lands let for purposes of building, though those rights may not be under a law intended only for agricultural landlords and tenants."[2] But the mere fact, that agricultural lands happen to fall within the municipal boundaries of a town, does not exclude or limit the applicability of the Act. It was held, therefore, that such lands lying outside the Town of Calcutta, but within its municipal boundaries, are subject to the provisions of the Act,[3] but the *Explanation* added to section 1, clause (*3*), *ante*, p. 38, by Bengal Act I. of 1907, sets aside that ruling.

Sub-section (*1*) of section 21, read with sub-section (*5*) of section 20, to some extent restores the settled *raiyat* to the position he occupied in the olden times.[4]

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[1] *See ante*, p. 38.

[2] *Rakhal Das Addy* v. *Dinomoyi Debi* [1889], I. L. R., 16 Cal. 652.

[3] *Biraj Mohini Dassi* v. *Gopeswar Mallick* [1899], I. L. R., 27 Cal 202.

[4] The *khudkasht raiyat* of old had not to prove twelve years' possession. It was enough that he *settled* in the village (*see* Bengal Government Letter No. 972.

Of course the provisions of section 21 are subject to what has already been stated—that occupancy-rights cannot be acquired in proprietors' private lands (known in Bengal as *khamar* or *nij* or *nij-jote*; in Behar as *ziraet*, *sir*, or *kamat*; and in Orissa as *majhas* and by other names), when such lands are let under a lease for a term of years, or under a lease from year to year.[1] Nor does a settlement taken by a settled *raiyat* of *char* or *deara*[2] land of the village give him a right of occupancy in that land till he has held it for twelve years; but he has the same right in any land which has accreted to his *jote* as he has in his original holding; and when a *raiyat* has an occupancy-right in a *jote*, he is entitled to hold such accreted lands as an increment to that *jote*.[3] As to accreted lands, *cf.* section 4, clause *First*, Reg. XI. of 1825 (partially repealed by Act VIII. of 1885).

No right of occupancy in proprietors' private lands.

Right of occupancy in accreted lands.

The acquisition of occupancy-rights is restricted to land held by the *raiyat* in the village or villages in which he is a settled *raiyat*. But, as already observed, no such rights can be acquired *under the Act* in land which is neither agricultural nor horticultural, and is situated in a town or suburb, and used for trading or residential purposes.[4] If the land has been held, and permanent structures raised upon it with the express or implied assent of the landlord, other rights may arise with respect to it; but they do not fall under this Act, which deals only with lands acquired primarily for purposes of cultivation.

Rights of occupancy cannot be acquired in land which is neither agricultural nor horticultural.

Sub-section (*2*) of section 21 has retrospective operation, and should be read with section 178, *post*.

Sub-section (2).

T. R. dated the 27th September 1882, in Selections, p. 207). And his rent could only be enhanced to the *majana* or customary rate, which itself could never be enhanced. Now the settled *raiyat's* rent may be enhanced from time to time on other considerations; therefore he is not in as good a position as the old *khudkasht raiyat*.

[1] *See* s. 116, *post*.

[2] Alluvial accretions. *See* s. 180, *post*.

[3] *Gourhari Kaiburto* v. *Bhola Kaiburto* [1894], I. L. R., 21 Cal. 233; cf. *Gobindmoni Dabia* v. *Dinobundhoo Shah* [1871], 15 W. R. 87; *Attimoollah* v. *Shahibooll'ah* [1871], 15 W. R. 149; *Bhagabut Pershad Sing* v. *Doorgbijoy Sing* [1871], 16 W. R. 95: S. C., 8 B. L. R. 73; *Finlay, Muir, & Co.* v. *Gopee Kristo Gossami* [1875], 24 W. R. 404, not followed.

[4] *Rakhal Das Addy* v. *Dinomoyi Debi* [1889], I. L. R., 16 Cal. 652.

The object of this sub-section will be understood from the fact that, as soon as it became known that the Legislature proposed to enact a law for placing occupancy-rights upon a securer basis, some landlords commenced to take contracts from their *raiyats* foregoing such rights. The motion for leave to introduce the Bill was made on the 2nd March 1883; and it was accordingly considered expedient in the general interests to make section 21 retrospective to that date.

Application of section 21.

The section thus applies to suits pending at the time the Act came into force, *viz.*, the 1st November 1885, which had not then resulted in a decree.

In a suit[1] brought by a landlord to recover possession of certain land in the possession of the defendant as tenant under the plaintiff, on the ground that the tenancy had terminated, it was found that, although the defendant was a settled *raiyat* of the village, he had held the lands in dispute for less than ten years, and the plaintiff's action, which was instituted before the Act came into operation, was a pending suit when the Act was passed into law. It was held that Bengal Act VIII. of 1869, standing by itself, would not create a right of occupancy in the defendant, because he had not been in possession for twelve years, but it was said that it was clear from sub-section (2)—

> That the Legislature provided that a settled *raiyat*, as defined in the Act, should be deemed to have acquired a right of occupancy in the land occupied by him as a *raiyat* in the village of which he is a settled *raiyat* between the 2nd of March 1883 and the commencement of the Act, that is to say, the 1st November 1885, not under the new Act, but under the Act then in force, that is to say, Bengal Act VIII. of 1869. It is clear, therefore, that this part of the section was intended to modify the provisions of Bengal Act VIII. of 1869, as regards the class of suits specified therein, during the period mentioned above.

This view was afterwards endorsed by the Full Bench,[2] who, dealing with the contention that effect should not be given

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[1] *Jogeshar Das* v. *Aisani Kaiburto* [1887], I. L. R., 14 Cal. 553.
[2] *Tapsi Sing* v. *Ram Saran Koer* [1888], I. L. R., 15 Cal. 376.

to the sub-section in a case pending before the commencement of the Act, expressed themselves thus:—

The first part of the section deals with the case of lands held by a settled *raiyat* at or after the date from which the Act spoke, that is to say, the date at which it came into operation, and it declares that such holding shall give a right of occupancy. Sub-section (*2*) deals with the case of lands held by a settled *raiyat* at an earlier period, namely, between the 2nd of March 1883 and the commencement of the Act, and it says that such holding shall be deemed to have given a right of occupancy. The sub-section is therefore in express terms retrospective.

The protection afforded by sub-section (*2*) is amplified by section 178, *post*.

Relinquishment.

Where some of the co-sharers of a joint occupancy-holding relinquished their share to the landlord, this section was held[1] not to entitle the other co-sharers to deprive the landlord of the benefit of the relinquishment.

Exemption from ejectment on sale for arrears of revenue.

The expression "right of occupancy" in the proviso to section 37 of Act XI. of 1859 (Revenue Sales) is not limited to rights acquired under Act X. of 1859, but includes also rights of occupancy acquired under the Bengal Tenancy Act, 1885. Consequently, a purchaser of an estate at a sale for arrears of revenue cannot eject a *raiyat* who has acquired a right of occupancy under the present Act.[2]

Effect of acquisition of occupancy-right by landlord.

22. (*1*) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession, or otherwise, [such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[1] *Peary Mohun Mondal* v. *Radhika Mohun Hasra* [1903], 8 C. W. N. 315.
[2] *Sarat Chandra Roy Chowdry* v. *Asiman Bibi* [1904], 8 C. W. N. 601.

may be);] but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, [he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and, if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Bengal Act I., 1907, only.

Illustration.

Ditto.

A, a co-sharer landlord, purchases the occupancy-holding of a raiyat *X*. *A* is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. *A* sub-lets the land to *Y*, who takes it for the purpose of establishing tenants on it: *Y* becomes a tenure-holder in respect of the land. Or *A* sub-lets it to *Z*, who takes it for the purpose of cultivating it himself: *Z* becomes a raiyat in respect of the land.]

(3) A person holding land as an *ijaradar* or farmer of rents shall not, while so holding, acquire, [by purchase or otherwise,] a right of occupancy in any land comprised in his *ijara* or farm.

Bengal Act I., 1907, only.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, [such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same.]

E. B. Assam Act I, 1908, only.

(3) In determining from time to time what is a fair and equitable sum under sub-section (2), regard shall be

Ditto.

had to the rent payable by the occupancy-raiyat at the time of the transfer, and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(*4*) A person holding land as an *ijaradar* or farmer of rents shall not, while so holding, acquire, [by purchase or otherwise,] a right of occupancy in any land comprised in his *ijara* or farm. E. B. Assam Act I, 1908, only

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in *ijara* or farm. Unaltered by Bengal Act I, 1907, and E. B. Assam Act I., 1908.

References. *Cf.* section 3, clause (*4*)—"*landlord;*" section 5, sub-section (*1*)—"*tenure-holder.*" *Cf.* also section 111, clause (*d*), Act IV. of 1882 (the Transfer of Property Act).

Principle. This section introduces into the Act the doctrine of merger recognized in English Law, and in the rulings under the former Acts. The doctrine of merger. *Nemo potest esse tenens et dominus*—A person cannot be, at the same time, both landlord and tenant of the same premises. "It may be laid down as a general rule that, whenever the particular estate and that immediately in reversion are both legal or both equitable, and, by any act or event subsequent to the creation of the particular estate, become, for the first time, vested in one person in the same right, their separate existence will cease, and a merger will take place."[1]

Thus, when a person holds a lease for a term of years, the union of the term with the immediate reversion, both being vested at the same time in one person *in the same right*, deter-

[1] Woodfall's "Landlord and Tenant," p. 326.

mines the lease by merger. "In such a case, the reversion merges or drowns the term."[1]

How the term may be kept alive.

But the termor may keep alive the term even after he has acquired the reversion. For example, where a tenant for ninety-nine years purchases the reversion in fee, and takes a conveyance thereof to a trustee for himself, expressly to prevent a merger, the term becomes one in gross, and no merger takes place.[2] Similarly, if a lessee were to create a sub-lease for a short period, and grant it to the lessor, the chattel interest would be merged in the fee.[3]

Enunciation of doctrine of merger before passing of Bengal Tenancy Act.

The principle, that, when the interests of the lessor and lessee of immoveable property vest in one and the same person by operation of law, or by voluntary transfer, the subordinate right becomes merged in the superior right, was enunciated in a number of rulings previous to the passing of the Bengal Tenancy Act.[4]

Landlords' *nij-jote.*

A landlord occupying his own lands as *nij-jote* could not, when the *zamindari* passed into other hands, lay claim to them on the ground that he is a *raiyat* with rights of occupancy.

In one case[5] it was said that a right of occupancy must be acquired against some body; if a *raiyat* was in possession of the land in a double capacity—both as a *raiyat* and as a *malik*, it was almost impossible to conceive how he could, under the circumstances, acquire a right of occupancy against himself. In

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[1] *Burton* v. *Barclay* [1831], 7 Bing. 745; *Lord Dynevor* v. *Tennant* [1888], 13 App. Cas., p. 279.

[2] *Belaney* v. *Belaney* [1867], L. R., 2 Ch. Ap. 138.

[3] *Burton* v. *Barclay* [1831], 7 Bing. 745.

[4] *Mitrajit Sing* v. *Fitzpatrick* [1869], 11 W. R. 206; *Reed* v. *Sreekishen Sing* [1871], 15 W. R. 430; *Bulchand Jha* v. *Lathu Mudi* [1875], 23 W. R. 387; *Lal Bahadur Sing* v. *Solano* [1883], I. L. R., 10 Cal. 45: S. C., 12 C. L. R. 559; and *Radha Gobind Koer* v. *Rakhal Das Mookerjee* [1885], I L. R., 12 Cal. 82.

[5] *Lal Bahadur Sing* v. *Solano* [1883], I. L. R., 10 Cal. 45: S. C., 12 C. L. R. 559.

another case,[1] it was held that a *benami* purchase by the proprietor in the name of a third person of an occupancy-*raiyat's* land determined the *raiyati* interest.

Landlord purchasing holding cannot acquire right of occupancy.

Section 22 applies only to holdings which are transferable *by custom*,[2] and embodies the rule of merger in a general way. Following the principles indicated above, sub-sections (*1*) and (*2*) declare that, when a landlord buys or otherwise comes into possession of an occupancy-right, such right becomes *ipso facto* extinguished, although the land continues to form part of the *raiyati* stock of the country. So that, if the land is settled with another *raiyat*, the right will accrue in his favour immediately if he be a settled *raiyat* of the village; or, if not, on the completion of the statutory period; or, if there are under-*raiyats* already in occupation, they may take the place of the *raiyat* whose occupancy-title had been acquired by the proprietor. The land does not become the private land of the proprietor.

Sub-section (*1*) deals with the union of the *entire* interests of the landlord and *raiyat* in one and the same person. In such a case, the subordinate interest becomes merged in the proprietary interest, or what would be called, in English Law, the fee. And this would be the result whether the landlord acquires the *raiyat's* interest or the *raiyat* the landlord's. But there is a reservation in favour of the rights of third persons. Sub-section (*2*), coupled with the *Explanation*, makes a distinction: if the owner of only a fractional share of an estate acquires an occupancy-holding by purchase or otherwise, then, so far as he is concerned, the occupancy-right "ceases to exist;" but, if the *raiyat* were to acquire only a fractional share of the landlord's or the intermediate holder's interest, he would not lose his occupancy-right. If, however, he acquired the 16-anna interests

Raiyat acquiring landlord's interest.

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[1] *Radha Gobind Koer* v. *Rakhal Das Mookerjee* [1885], I. L. R., 12 Cal. 82. The doctrine of merger, however, does not apply to the purchase by a *zamindar* of a *patni taluk*. He can keep alive the *patni* interest by paying rent to himself. —*Jebanti Nath Khan* v. *Gokool Chunder Chowdhry* [1891], I. L. R., 19 Cal. 760.

[2] *Grish Chandra Chowdhry* v. *Kedar Chandra Roy* [1899], I. L. R., 27 Cal. 473.

of his immediate landlord, his occupancy-right would cease to exist.

Reservation regarding the rights of third parties.

Sub-section (*2*) makes the same reservation regarding the rights of third parties, *viz.*, that, though, as between transferor and transferee, the occupancy-right shall cease to exist, the result shall not affect prejudicially "the rights of any third person." And, accordingly, where a part-proprietor of immoveable property sued his co-sharers for his share of the rent of a holding upon the allegation that it had been acquired by them by purchase, and it was contended that the sale had put an end to the tenancy, it was held by the High Court, upon the phraseology of sub-section (*2*), that the third person mentioned therein must be held to include every person interested other than the transferor and transferee, so that the acquisition of an occupancy-right by a proprietor would not affect the right of a co-sharer landlord to receive his share of the rent of the tenancy.[1] This has been explicitly provided for in the amendments made by Bengal Act I. of 1907. The following *dictum* in a well-known case[2]—"There is no law in this country to prevent one of several co-proprietors holding the *status* of a tenant under the other co-proprietors of land which appertains to the common estate"—has been nullified by this amending Act I. (B. C.) of 1907.

Case-law.

The plaintiff and the defendant were joint owners of a *taluk;* and the latter had, in execution of a decree for his share of arrears of rent due from an occupancy-*raiyat* who held under both the landlords, sold and purchased the *jote* himself. The plaintiff sued for *khas* possession to the extent of his share in the *jote* on the allegation that, under section 22, sub-section (*2*), of the Bengal Tenancy Act, the *holding* was extinguished by the defendant's purchase. The first Court held that, although

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[1] *Sitanath Panda* v. *Pelaram Tripati* [1894], I. L. R., 21 Cal. 869: 2nd App. No. 37 of 1893 (NORRIS and BANERJEE, *JJ.*, 30th March 1894).

[2] *Jawadul Huq* v. *Ram Das Saha* [1896], I. L. R., 24 Cal. 143: S. C., 1 Cal. W. N. 166. Strictly construed, sub-section (*2*) does not contemplate the case of a devolution of the occupancy-right by inheritance, for it speaks of transfer. But this may be due to inadvertence or hurried drafting.

the occupancy-right had merged, the *holding* was not extinguished, and that therefore the defendant was entitled to hold on as a *tenant*. The suit was accordingly dismissed. This decision was reversed on appeal by the Subordinate Judge, who held that the principal defendant had purchased nothing, the effect of his purchase being to extinguish the entire tenancy. On appeal to the High Court, the Subordinate Judge's decision was reversed by BEVERLEY, *J.*, and, on appeal under the Letters Patent to a Bench of five Judges, the decision of BEVERLEY, *J.*, was affirmed in the following words:—

Sub-section (*2*) of section 22 of the Tenancy Act provides that, if an occupancy-right is transferred to a person jointly interested in the land as proprietor, the occupancy-right shall cease to exist. It is not said, and the sub-section cannot be understood to mean, that the holding shall cease to exist, but that the occupancy-right, which is an incident to the holding, shall cease to exist, and there is nothing in the sub-section inconsistent with the continuance of the holding divested of this right of occupancy which attached to it. The saving clause in the sub-section, that 'nothing in it shall prejudicially affect the rights of any third person,' indicates also that the holding would, for some purposes at all events, continue to exist.[1]

It must be remarked that this use of the word 'holding' seems to ignore the definition of it in section 3 (*9*), *ante* (p. 51). This rulings no longer holds good.

The owners of a certain *patni taluk* obtained a decree for rent against a *raiyat* holding an occupancy-*jote* under the *patni*. In execution of the decree, they brought to sale the holding in question, and purchased it themselves, and afterwards sold it to the plaintiff, the rent payable being the same as the previous holder had paid. When the plaintiff proceeded to take possession of the land, he was opposed by the defendant, who alleged that he had purchased from the defaulting tenant a portion of his holding. The plaintiff, thereupon, instituted a suit for possession, which was dismissed by the Lower Appellate Court on the ground that what was sold at the execution-sale was the

[1] *Jawadul Huq* v. *Ram Das Saha* [1896], I. L. R., 24 Cal. 143: S. C., 1 C. W. N. 166.

occupancy-right; that that right and the holding were extinguished when the landlords purchased; and that, in point of fact, they purchased nothing, and that, consequently, the plaintiff took nothing under his conveyance from them. The High Court held that, if the former tenant had a right of occupancy in the land, there was nothing in the law which prevented the landlords from purchasing an occupancy-holding.[1] And it went on to add—

The effect of a purchase of an entire occupancy-holding by the landlords is not necessarily to put an end to the holding, but to divest it in their hands of the right of occupancy, if any, which is attached to it. The defendants, in the present case, stand in no higher position than the defaulting tenant; they were bound by the sale, and have no existing right, and it is conceded that they could not resist the landlords in taking possession of the land. It seems to us unnecessary to consider the exact nature of the right which the plaintiff acquired by his purchase: that is a matter to be decided between him and his vendors. If his vendors acquired a right, as against the defendants, to this holding, and to *khas* possession of it, there is nothing to prevent their giving the holding to the plaintiff, and conferring on him the right to hold it as their tenant. We know of no law which prevents landlords from purchasing a holding and disposing of it. It does not seem to make very much difference whether they, being the landlords, dispose of the old holding under its old name, or whether they dispose of it as a holding newly created.

When a landlord acquires a holding to which a right of occupancy is attached, that right ceases to exist, but not the holding.

The result of these rulings was, that, if a landlord acquired a holding to which a right of occupancy was attached, the right ceased to exist, but not the holding; in other words, the holding continued in existence divested of the occupancy-right,[2] so that, if he were to transfer it to somebody else, the latter would have a valid title therein, and might acquire a right of occupancy in the land under the provisions of the law.

The effect of these rulings was considered contrary to public policy, inasmuch as they tended to sanction the acquisition of occupancy-rights by proprietors under themselves. Hence section

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[1] *Miah Jan* v. *Minnat Ali* [1896], I. L. R., 24 Cal. 521.

[2] *Jawadul Huq.* v. *Ram Das Saha* [1896], I. L. R., 24 Cal. 143; S. C., 1 C. W. N. 166.

22 was largely modified by Bengal Act I. of 1907 and E. B. Assam Act I. of 1908 to counteract them.

As already explained,[1] section 22 refers to occupancy-holdings which are of a transferable character. It is only in these cases that the occupancy-right is severable from the holding. And consequently the sale and purchase of a non-transferable occupancy-holding gives no right to the transferee to retain possession of it.[2] And, if, in consequence of the sale, the tenant, who was in possession, leaves the land, and the holding is in the possession of the joint proprietor who had obtained the decree, the land must be treated as having been abandoned, and all the proprietors would be entitled to obtain possession of the same.

Effect of settlement with others of an occupancy-holding purchased by the landlord.

When the right, title, and interest of an occupancy-*raiyat* was put up to sale, and purchased by the landlord in execution of a Civil Court decree obtained by him against the tenant, and was afterwards settled with other persons, he cannot treat the *jote* as still subsisting in the hands of the previous holder, and sell it again in execution of a rent-decree against him; and, if he does so, the purchaser would be entitled to recover any consideration paid at the latter sale.[3]

Sub-division of jote.

The existence of a custom of transfer of occupancy-holdings in a particular district will not justify a *raiyat* in sub-dividing his *jote*, and transferring different parts of it to different persons; and, in case of such transfer, the *zamindar* would be entitled to treat the transferees as trespassers, and to eject them.[4]

Acquisition by raiyat of proprietary interest in estate.

The acquisition by a *raiyat* of a fractional proprietary interest in the estate would not prevent his acquiring an occupancy-right in his holding. A tenant, who had commenced to occupy his holding in 1871, acquired by purchase a fractional share of the proprietary interest in 1878, and continued to occupy

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[1] *Ante*, p. 145.

[2] *Grish Chandra Chowdhry* v. *Kedar Chandra Roy* [1899], I. L. R., 27 Cal. 473: S. C., 4 Cal. W. N. 569; *see* also *Durga Churn Mandal* v. *Kali Prasanna Sarkar* [1899], I. L. R., 26 Cal. 727: S. C., 3 Cal. W. N. 586.

[3] *Ram Saran Poddar* v *Mohammed Latif* [1898], 3 Cal. W. N. 62.

[4] *Tirthanund Thakoor* v. *Mutty Lal Misser* [1878], I. L. R., 3 Cal. 774.

the holding as *raiyat* till May 1885, when he was dispossessed. In March 1886, on his suing for possession, it was held that, under Bengal Act VIII. of 1869, there was nothing to prevent an occupancy-right being acquired if, after his purchase, he continued to hold the land as a *raiyat*, and if the relation of landlord and tenant existed between himself and the proprietors, and if the period for which he held extended to twelve years from the date of the commencement of the holding.[1]

Sub-section 3).

Sub-section (*3*) lays down the principle that a mere farmer of rent, by whatever name he may be called, shall not, during the period of his lease, acquire a right of occupancy in any land comprised in his "*ijara* or farm;" but "a person having a right of occupancy in land" does not lose it by taking an *ijara* or farm of the estate within which his holding is situate. This was the law as laid down in the decided cases before the Act came into force; and the framers of the present Act have adopted these principles.[2] And it has been distinctly ruled[3] that a person in occupation of land as a *raiyat* is not debarred under section 22 from acquiring occupancy-rights in it owing to his being jointly interested in the land as *ijaradar* or farmer. The learned Judges observed that the provisions of sub-section (*3*),—

> while they say that an *ijaradar* shall in this way lose his occupancy-rights, they do not say that a person merely jointly interested in land as an *ijaradar* shall thereby lose them. It is to be observed that sub-sections (*1*) and (*2*) of the same section clearly lay down that a person interested as proprietor or permanent tenure-holder, whether jointly or singly, shall lose his occupancy-right in land cultivated by him. It can scarcely be by accident, then, that a similar provision with regard to *ijaradars* has been omitted from sub-section (*3*). No case has been brought to our notice in which it has been laid down that, under the old law, a person jointly interested in land

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[1] *Gour Bukhsh Roy* v. *Jeo Lal Roy* [1888], I. L. R., 16 Cal. 127.

[2] *Gilmore* v. *Srimanto Bhumik* [1864], W. R., Sp. No. (Act X.) 77; *Watson & Co.* v. *Jogendra Narain Roy* [1864], 1 W. R. 76; *Mokundy Lal Dhobi* v. *Crowdy* [1872], 17 W. R. 274: S. C., 8 B. L. R. (App.) 95; *Umanath Tewari* v. *Kundan Tewari* [1873], 19 W. R. 177; *Savi* v. *Punchanan Rai* [1876], 25 W. R. 503; *Ram Saran Sahu* v. *Veryag Mahton* [1876], 25 W. R. 554; *Jardine, Skinner, & Co.* v. *Sarat Sundari Debi* [1878], 3 C. L. R. 140: L. R., 5 I. A. 164; *Rai Kumal Dasi* v. *Laidley* [1879], I. L. R., 4 Cal. 957.

[3] *Maseyk* v. *Bhagbati Barmanya* [1890], I. L. R., 18 Cal. 121.

as an ijaradar shall lose his occupancy-rights in land cultivated by him..... Hence, we must hold that, both under the former and the present law, a person jointly interested in land as *ijaradar* does not thereby lose his occupancy-rights, and *à fortiori* his entire rights as a tenant, in land held and cultivated by him as a *raiyat*.

See footnote[1] on the words "by purchase or otherwise" in sub-section (*3*).

Incidents of Occupancy-right.

Rights of raiyat in respect of use of land.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land, or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

References.

Cf. section 108, clause (*p*), of the Transfer of Property Act, IV. of 1882.

This section must be read with section 155, and with section 178, sub-section (*3*), clause (*b*), *post*, which declares that nothing in a contract made after the passing of this Act shall take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23.

As to an occupancy-*raiyat's* rights in the matter of improvements, *vide* sections 76, *et. seq.*, *post*.

The old law.

Under the old law, the right of the tenant to use the land was restricted to the purposes for which the tenancy was created, and, in case of any attempted diversion, the landlord was entitled to restrain the *raiyat*. So long, however, as there was not a complete change in the mode of enjoyment, the Courts were inclined to place a liberal interpretation on the right of the tenant to use the land in his occupation.[2]

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[1] In *Ramrup Mahton* v. *Mannars*, 4 C. L. J. 209, it was ruled that "acquire" in section 22 (*3*) does not include 'purchase.' Hence the new words "by purchase or otherwise" were inserted by Act I. (Bengal), 1907, and Act I. (E. B Assam), 1908, to prevent an *ijaradar* buying up occupancy-rights during the term of his *ijara* lease behind the back of the landlord.

[2] *Lall Sahoo* v. *Deo Narain Singh* [1878], I. L. R., 3 Cal. 781: S. C., 2 C. L. R. 294.

Under Act X. of 1859, a *raiyat* with a right of occupancy might erect a *pucca* house on his land, and do what he liked with it, so long as he did not injure it to the detriment of the *zamindar*.[1]

The old law (*Contd.*)

Although the Courts were disposed to place a liberal interpretation on the rights of the tenants, they did not sanction a complete change[2] in the enjoyment. And, accordingly, the *zamindar* was held entitled to object to the erection of brick-built houses on land let to a tenant for purposes of cultivation, or to the doing, in fact, of anything which would substantially alter the character of the tenure.[3] Nor could an occupancy-*raiyat* under the old law excavate a tank on his land[4] in contravention of the terms of his lease,[5] or dig earth for the purpose of making bricks.[6] If he possessed a *mukarrari* interest in the land, he could sink a well, or do anything else which did not entirely destroy the land so as to endanger the *zamindar's* ground-rent.[7]

Acquiescence of the landlord.

But the right of the landlord to object had to be promptly exercised: if he stood by and allowed his tenant to erect *pucca* buildings on the land, he could not afterwards turn round and seek to evict the *raiyat* on that basis.[8]

If, in such a case, the tenancy should be determined, the position of the parties would appear to be this—The landlord would be the owner of the soil; the tenant, of the house.[9]

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[1] *Nyamootullah Ostagur* v. *Gobind Chunder Dutt* [1866], 6 W. R. (Act X. Rul.) 40.

[2] *Babu Lall Sahu* v. *Deo Narain Singh* [1878], I. L. R, 3 Cal. 781 : 2 C. L. R. 204.

[3] *Shib Das Bundopadhya* v. *Baman Das Mukhopadhya* [1871], 8 B. L. R. 242 : 15 W. R. 360; *Jagat Chandra Rai* v. *Eshan Chandra Bannerji* [1875], 24 W. R. 220; *Babu Lall Sahu* v. *Deo Narain Singh* [1878], I. L. R., 3 Cal. 781 : 2 C. L. R. 294.

[4] *Tarini Charan Basu* v. *Deb Narain Mistri* [1871], 8 B. L. R. (App) 69.

[5] *Monindro Chandra Sarkar* v. *Maniruddin Biswas* [1873], 11 B. L. R. (App.) 40 : 20 W. R. 230.

[6] *Kadambini Debi* v *Nobin Chandra Adukh* [1865], 2 W. R. 157; *Anand Kumar Mukerji* v. *Bissonath Banerji* [1872], 17 W. R. 416.

[7] *Dhipat Singh* v. *Halalkhuri Chowdri* [1864], W R., Sp. No, 279.

[8] *Benimadhub Bannerji* v. *Jai Kishen Mukerji* [1869], 12 W. R 495 : 7 B L. R 152; *Shib Das Bundopadhya* v. *Baman Das Mookerjee* [1871], 8 B. L. R. 242 : 15 W. R. 360.

[9] *Shib Das Banerji* v. *Baman Das Mookerji* [1871], 15 W. R. 360 (at p. 362).

Where the land had, with the tacit or express consent of the landlord, ceased to be agricultural, and the tenant had since built a homestead, or used part of it for tanks or gardens, it was held that the nature of the tenure was not altered thereby, nor had the tenant deprived himself of any right of occupancy he might have acquired.[1]

Similarly, if the landlord allowed the tenant to excavate a tank without making any attempt to restrain him,[2] or to dig earth for brick-making.[3]

Where a tenant of an agricultural holding planted his *jote* with mangoe trees to the knowledge, but without the consent, of the landlord, thus changing the character of the land, and the landlord sued some time afterwards for a mandatory injunction to have the mangoe trees removed, it was held that, having stood by and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter, he was not entitled to any equitable relief in the shape of an injunction.[4]

Change made by the new law.

Section 23 makes a great change in the old law; it declares that an occupancy-*raiyat* may use the land in his occupation in any manner which does not "*materially* impair the value of the land, or render it unfit for the purposes of the tenancy." And *cf.* section 155, *post.*

Right of raiyat to make improvements.

Under section 77, sub-section (*1*), a *raiyat* at fixed rates and an occupancy-*raiyat* have a right to make "improvements" on their land, and "improvement" is defined in section 76 (*1*) to mean any work which adds to the value of the holding, which is suitable to the holding, and which is consistent with the purpose for which it was let. Sub-section (*2*) of section 76 sets forth a number of works which are to be presumed to be improvements within the meaning of the section "until the

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[1] *Prasanna Kumar Chaturji* v. *Jagan Nath Baisakh* [1881], 10 C. L. R. 25.

[2] *Kedar Nath Nag* v. *Khettro Pal Sritiratna* [1880], I. L. R., 6 Cal. 34 : 6 C. L. R. 569.

[3] *Nicholl* v. *Tarini Charan Basu* [1875], 23 W. R. 298.

[4] *Noyna Misser* v. *Rupikun* [1882], I. L. R., 9 Cal. 609 : S C., 12 C. L. R. 300.

contrary is shown," subject, however, to the exception that no work executed by the *raiyat* of a holding "shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property."

Process under the general law in case of misuse of land.

If a *raiyat* were to use the land in a manner which materially impairs it, or renders it unfit for the purpose for which it was let, the landlord would be entitled, under the general law, to maintain an action for damages, and to compel the *raiyat* to restore the land to its former condition. He might also seek for an injunction restraining the tenant from further injuring it.

Ejectment-suit.

But, in order to maintain a suit for the ejectment of the tenant on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, the landlord must comply with the provisions of section 155 of the Act, *post*. That section makes it a condition precedent that the landlord should serve the tenant with a notice in which he must specify the particular misuse, and, where the misuse is capable of remedy, require the tenant to remedy the same, and to pay a reasonable compensation therefor. The action for ejectment would be entertained only if the tenant fails to comply with the "request" within a reasonable time. In making a decree, the Court will fix the compensation; and, if the misuse is capable of remedy, will give a direction to the tenant to remedy the same; and, if the tenant complies with the order to the satisfaction of the Court, the decree for ejectment would not be executed.[1]

Erection of indigo factory.

Where land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of the land would render it "unfit for the purposes of the tenancy," and the landlord would be entitled to a permanent injunction restraining the tenant from erecting such a factory.[2]

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[1] *Pershad Singh* v. *Ram Pertab Roy* [1894], I. L. R., 22 Cal. 77.

[2] *Surendra Narain Singh* v. *Hari Mohun Misser* [1903], I. L. R., 31 Cal. 174.

Section 23 further declares that the *raiyat* shall not be entitled to cut down trees upon his holding "in contravention of any local custom." Under the old law it was held that the *zamindar* had a right to the trees grown upon his land by the tenant, who, although he might enjoy the benefit of the growing timber during his occupation, had no power to cut down the trees; and that the landlord was entitled to sue to have his right in the trees declared.[1] During his tenancy, however, the *raiyat* was held entitled to the exclusive possession of the trees on his land.[2]

Trees.

The old law.

Under the old law the *raiyat* had no right to cut down trees and convert the timber to his own use,[3] but he had a right to the possession of the trees on his land, and it was for the landlord to establish that he (the landlord) was entitled to remain in possession of the trees.[4]

Under the English law, "the property in trees is vested in the owner of the inheritance of the land upon which they grow."[5] The landlord, however, is entitled to the trees which are likely to grow into timber, whilst the property in bushes is in the tenant.[6]

The English Law.

The Bengal Tenancy Act makes no specific provision regarding the right to the trees growing on the holding of a *raiyat*; such right is dependent on custom, though the tenant would appear to have ordinarily a right to enjoy all the produce.

The Bengal Tenancy Act; right to trees dependent on custom.

Under section 23 he is debarred from cutting them down, without the consent of the landlord, in contravention of any local custom. This evidently means that he may do so unless there is a custom to the contrary. The Calcutta High Court has drawn a distinction between the right of merely cutting

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[1] *Abdul Rahman* v. *Dataram Bashee* [1864], W. R., Sp. No., 367.
[2] *Mahomed Ali* v. *Bolaki Bhagat* [1875], 24 W. R 330.
[3] *Abdul Rahman* v. *Dataram Bashee* [1864], W. R, Sp. No, p. 367.
[4] *Shaik Mahomed Ali* v. *Bolaki Bhagat* [1875], 24 W. R. 330.
[5] Woodfall's Landlord and Tenant, p. 658.
[6] *Berriman* v. *Peacock* [1832], 9 Bing. 384.

down the trees and that of appropriating them after they have been felled. The onus of establishing that there is a custom against the tenant with occupancy-rights cutting down the trees is on the landlord, but the burden of showing that the *raiyat* has a right to appropriate them after they have been felled is on him.[1]

The correctness of the view involved in this extremely technical differentiation is very much open to question. It is probably quite against the intentions of the framers of this Act, who deliberately altered the old law on this point as under it, a raiyat had no right to cut down trees. Now, local custom must be considered. For example, the *zamindar* may, by a custom of the *zamindari*, only be entitled to receive a certain proportion of the value of the trees cut down by the *raiyats* without his consent.[2] The onus of proving such a custom would also be on the *raiyat*.

Where it is customary for *raiyats*, on occasions of cremations or village feasts, to cut down and appropriate valueless or *agachha* trees growing on their holdings, simply with the permission of the headman, without any payment and without the consent of the landlord, no action for damages could be maintained.[3]

Certain occupancy-*raiyats* were, by the custom of the *zamindari*, entitled, after obtaining the permission of the village *barua*,[4] to cut down and appropriate *agachha*[5] trees for fuel. No payment was ever made for such permission. The *raiyats* cut down and appropriated some *agachha* trees grown upon the lands after they had entered into possession. In a suit for damages, it was *held* that, even if permission to cut the trees had not been given, the *zamindar* had in no way suffered damage, and had no

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[1] *Nafar Chandra Pal Chowdhuri* v. *Ram Lall Pal* [1894], I. L. R., 22 Cal. 742.

[2] *Nafar Chandra Pal Chowdhuri* v. *Hasari Nuth Ghose* [1894], I. L. R., 22 Cal. 751 (*note*).

[3] *Samsar Khan* v. *Lochin Das* [1895], I. L. R., 23 Cal. 854.

[4] *Barua, i. e.*, a headman.

[5] *Agachha* trees, *i. e.*, valueless trees.

cause of action, and that the onus of proving the custom of the *zamindari* was on the *zamindar*.[1]

The right of a tenant holding under a perpetual lease.

But, where the tenant has a perpetual lease at a fixed rent, and the lessor is entitled to a quit-rent, and has reserved no reversionary interest in the land or the trees, the ownership in the trees belongs to the lessees.[2] A mere termor has no such right. Where a lease was granted for the express purpose of clearing jungle land and bringing it under cultivation, and there was no reservation in the lease of the right in the trees, the lessee had the right to appropriate them when cut.[3]

Under the English Law, windfalls of sound timber trees belong to the landlord, but windfalls of trees which are not timber, and of damaged timber trees, belong to the tenant.[4] The Allahabad High Court[5] has held that, where a *zamindar* claims a right to the fallen wood of self-sown trees grown on an occupancy-holding, he must prove some custom or contract by which he is entitled to such right. But the learned Judge went on to add that in India there was no general rule to the effect that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees. This statement regarding the right of the tenant must, it is submitted, be accepted with reservation. Under the Bengal Tenancy Act, the right of the landlord or the tenant does not depend on the fact whether the tree comes within the category of *timber* or not. And it would seem that the *raiyat* would have a title to *all* windfalls of wood upon his holding unless there is a custom to the contrary.

Trees grown by the tenant during his occupancy accede to the soil, and become the property of the landlord on the termi-

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[1] *Samsar Khan* v. *Lochin Das* [1896], I. L. R., 23 Cal. 854.

[2] *Saroda Sundari Debia* v. *Gonee Sheik* [1868], 10 W. R. 419; *Goluck Rana* v. *Nubo Sundari Dasi* [1874], 21 W. R. 344.

[3] *Manmohini Gupta* v. *Raghu Nath Misra* [1895], I. L. R., 23 Cal. 209.

[4] Woodfall's "Landlord and Tenant," p 659. By the term *timber* is meant properly such trees only as are fit to be used in building and repairing houses, but even these must be not less than six inches in diameter or two feet in girth to be considered as 'timber:" *Whitty* v. *Lord Dillon* [1869], 2 F. & F. 67.

[5] *Nathan* v. *Kamla Kuar* [1891], I. L. R., 13 All. 571.

nation of the tenancy unless the tenant uses, during its subsistence, his right of removing the trees, provided that right is not taken away by contract.[1]

Obligation of raiyat to pay rent.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

References.

The expression, "fair and equitable rates," is taken from section 5 of Act X. of 1859 and section 5 of Bengal Act VIII. of 1869, which declared as follows :—

Raiyats having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive *pattas* at fair and equitable rates. In case of dispute, the rate previously paid by the *raiyat* shall be deemed to be fair and equitable unless the contrary be shown in a suit by either party under the provisions of this Act.

In many parts of this Province, 'rates' are quite unknown. See notes on section 30, *infra*.

The provisions contained in section 5 of Act X. of 1859 and section 5 of Bengal Act VIII. of 1869 are reproduced in the present Act in three places, *viz.*, sections 24, 27, and 35, *post*.

Principle of this section read with sections 27 and 29 to 35.

The principle of section 24 of the present Act, read with section 27, is, that an occupancy-*raiyat* shall pay rent at fair and equitable rates, and that the rent for the time payable, or, in other words, the existing rent, shall be presumed to be fair till the contrary is proved.

The existing rent is the result of the customs, traditions, experience, oppression, and haggling of all the preceding ages, and is therefore presumed to be fair till the contrary is proved. It is for anybody who requires the existing rents to be altered to produce evidence in support of his contention. Existing rents can only be altered by the Civil Courts on certain specific grounds described in sections 29 to 35 of this Act, *infra*. The effect of these provisions is to give occupancy-tenants practical certainty as to the

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[1] *Chutter Bhooj Tewari* v. *Syud Villaet Ali Khan* [1864], Sp. No., W. R., 223; *Mussl. Ameerun* v. *Sunjeeda* [1869], 11 W. R. 226.

amount of the rent which they may legally be called upon to pay at any particular time. Revenue-officers, in settling rents under Chapter X., and Settlement Officers in other provinces making settlements of fair rents, are allowed a larger discretion in the enhancement or reduction of existing rents under what are termed "general considerations" than is given to Civil Courts in Bengal under these sections. In fact, the presumption that the existing rent is fair, and the provisions permitting alteration of it only on certain specified grounds, constitute the most important safeguards in this Act for the protection of the *raiyats* against arbitrary and uncertain alterations of rent. The existing rent is the "sheet anchor" of the Courts in settling fair rents, and can only be modified on specific evidence according to the principles embodied in sections 29 to 35 of the Act, *infra*.

Meaning of "fair and equitable."

Although the term "fair and equitable" is not defined either in this or the previous Acts, its meaning may be gathered from section 27 read with sections 30 and 38, *post*. Under the old law a *raiyat* with a right of occupancy could not be called upon to pay more than "a fair and equitable rent." And, in determining what was fair and equitable, the Court could take into consideration the rise in wages; but it does not follow that, because the wages[1] are twice what they were, and the necessaries of life have risen, the old rent is fair and equitable under the altered state of circumstances.[2]

Rent how to be determined

In a suit for enhancement of rent, where not only the value of the produce has increased, but the productive powers of the land have decreased, and the expenses of cultivation have increased, the formula to be applied in determining the rent will be as follows: the average value of the produce before the decrease in the productive powers of the land will be to the average value of the present produce, *minus* the increased cost of production, as

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[1] *Savi* v. *Jeeto Meah* [1862], Marshall's Reports, p. 186.

[2] *Noor Mohamed Mundle* v. *Hurree Prosunno Roy* [1854], Sp. No., W. R. (Act X.,) 75.

the rent previously paid will be to that which the land ought now to pay.[1]

The Court was also bound to take into consideration other matters.[2]

Alteration of rent by suit.

Under the present law the existing rent is to be presumed fair until the contrary is proved (section 27). Sections 30 to 34 specify the grounds on which the contrary allegation may be founded. Section 38 declares the grounds on which the *raiyat* may claim reduction. The presumption in favour of the existing rent being the fair and equitable rent may be rebutted by showing (*a*) that the rent paid by the *raiyat* is below the prevailing rate (if any); that the average prices of staple food-crops have risen during the currency of the present rent; that the productive powers of the land have been increased by an improvement effected by the landlord, or that the productive powers of the land have been increased by fluvial action (section 30), in which cases the existing rent must be enhanced in order to arrive at a "fair and equitable" rent; or (*b*) that there has been a fall in the average prices of staple food-crops during the currency of the present rent, or that the soil has become deteriorated by a deposit of sand or the like (section 38), in which latter cases the existing rent would have to be reduced in order to arrive at a fair and equitable rent within the meaning of the Act.

The operation of sections 30 to 34 is controlled by section 35, which declares that, "notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances unfair or inequitable."

Protection from eviction except on specified grounds.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding except in execution of a decree for ejectment passed on the ground—

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[1] *Sowdaminee Dassee* v. *Sookool Mahomed* [1867], 7 W. R. 94.

[2] *Thukurani Dassi* v *Bisshesur Mukerji* [1865], 3 W. R. (Act X.) 29; also see *Sowdaminee Dassee* v. *Sookool Mahomed* [1867], 7 W. R. 94.

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and, on breach of which, he is, under the terms of a contract between himself and his landlord, liable to be ejected.

References.

This section should be read with sections 65, 89, 155, and 178, sub section (*1*), cl. (*c*).

Principle.

The principle on which section 25 is based is, that, by the ancient customary law of India, a *khudkasht raiyat* was entitled to hold his land as long as he paid the rent for it.

An occupancy-raiyat's interest in his holding can be divested only for the special reasons prescribed by the law.

An occupancy-*raiyat* has a substantive interest in his holding, and, although that interest may not always be transferable, yet it is such that he cannot be deprived of it except under the provisions of the law relating thereto. The interest possessed by him was created by the common law and custom of the country, and not by any act of or contract with the landlord, and, therefore, cannot arbitrarily be taken away by the latter. He can be divested of it only for the special reasons prescribed by the law.

The security afforded to occupancy-raiyats by the present law.

The security afforded to occupancy-*raiyats* by the present enactment can be judged from the following observations: Bengal Act VIII. of 1869 no doubt declared (like section 89 of the present Act) that a *raiyat* with a right of occupancy could not be evicted except under a decree regularly obtained under section 52.[1] but the landlord was entitled to enforce a covenant in the lease by which forfeiture was expressly provided as the penalty for the breach of any particular clause.[2] And accordingly,

Bengal Act VIII. of 1869.

[1] *Brojendra Kumar Rai Chowdhury* v. *Bungo Chunder Mundul* [1885], 12 C. L. R. 389; *Duli Chand* v *Mussamut Raj Kesur* [1882], 11 C. L. R. 326; *Musyatollah* v *Noorsahan* [1883], I. L R., 9 Cal. 808; *Duli Chand* v. *Meher Chand Saha* [1872], 12 B. L. R 439; *Mathoora Mohan Pal Chowdhry* v. *Ram Lall Bose* [1879], 4 C. L. R. 469; *Mahomed Amir* v. *Dianat Ali* [1881], 9 C. L. R. 185.

[2] *Mahammed Fais Chowdhry* v. *Shib Dulari Tewari* [1871]. 16 W. R. 103.

where a lessee had covenanted not to excavate a tank on the lands leased to him, on breach of which covenant he was liable to be evicted, besides paying the cost of filling up the tank, it was *held*[1] that the *zamindar* was entitled to declare the lease cancelled and resume the whole of the lands, or to sue for cancellation of the lease and for damages, and that there was nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease.[2] But, although parties were bound by the terms which they had deliberately agreed upon between themselves,[3] yet, in the absence of any provision in the lease for its cancelment upon the breach of its conditions, or reserving to the landlord the right of re-entry on the happening of any such breach, it was held[4] that such breach did not lead to the cancellation of the lease, or give a right to eject.

Act VIII. of 1885: Landlord not entitled to eject for breach of a covenant in the lease.

Under the present Act, the landlord is not entitled to eject an occupancy-*raiyat* upon the basis of a covenant in the lease providing for forfeiture or re-entry as the remedy for the breach. The *raiyat* cannot be ejected except in execution of a decree passed on one of the two grounds specified in section 25, and no other. But, before the landlord can even bring a suit on either of these two grounds, he must serve a notice on the tenant specifying the misuse or breach complained of, and, where the misuse is capable of remedy, requiring the tenant to remedy the same, and in any case to pay reasonable compensation; and no suit for ejectment can be brought unless the tenant has failed to comply within a reasonable time with the notice (see section 155, *post*).

Conditions precedent to the maintenance of a suit for ejectment.

Covenant stipulating for eviction on breach of a condition not enforceable.

As already mentioned, even if the *raiyat* were to stipulate in the lease that he would be liable to be evicted on breach of any stipulation in the lease, such covenant would not be enforceable in law; [see section 178, sub-section (*1*), clause (*c*), *post*].

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[1] *Maharaja Beerchand Manick* v. *Shaik Hussain* [1871], 17 W. R. 29.
[2] *Chunder Nath Misser* v. *Sirdar Khan* [1872], 18 W. R. 218.
[3] *Ramkumar Bhattacharjee* v. *Ram Kumar Sein* [1867], 7 W. R. 132.
[4] *Augar Singh* v *Mohini Dutt Singh* [1864], 2 W. R. (Act X.) 101.

What would amount to an use of the land in a manner rendering it unfit for purposes of the tenancy is a question which must depend on the special circumstances of each case. The conversion of land admittedly let for agricultural purposes into an orchard has been treated as bringing the act of the tenant under clause (*a*) of section 25.[1] So, too, the manufacture of indigo cakes from indigo plants has been *held*[2] not to be an agricultural purpose, and the landlord is entitled to a permanent injunction restraining the tenant from erecting an indigo factory. The landlord is not bound to seek to eject the tenant under section 25(*a*).

What would amount to an improper user of the land.

The period of limitation for an action under this section is that provided by art. 32, Sch. I., of the present Limitation Act. In a suit by a landlord for a mandatory injunction against the tenant to fill up a tank excavated by him in contravention of the terms of the tenancy, and to pay damages for his wrongful act, and, in the alternative, for ejectment, the defendant pleaded that the suit was barred, as it was brought more than two years after the excavation of the tank; and it was *held*[3] that the period of limitation for such a suit was that prescribed by art. 32, *viz.*, two years. *Query*—Would such a suit lie under the present Act if the tank were an improvement? See section 76, *post*.

Limitation.

Act IX. of 1908.

There is nothing in law, however, to prevent an occupancy-*raiyat* from converting himself into a mere rent-receiver. A considerable quantity of land, extending over 500 *bighas*, was granted to one *D* for cultivating them herself, or for getting them cultivated so long as the lands were in *D's* occupation; they were cultivated partly by her servants and partly by under-*raiyats*. Afterwards the property passed into the hands of one *H*, and

An occupancy-raiyat may convert himself into a rent-receiver.

[1] *Soman Gope* v. *Roghubar Ojha* [1896], I. L. R., 24 Cal. 160: S. C., 1 Cal. W. N. 223.

[2] *Surendra Narain Singh* v. *Hari Mohan Misra* (1904), I. L. R., 31 Cal. 174. See also *Hari Mohan Misra* v. *Surendra Narain Singh* (1907), I. L. R., 34 Cal. 718.

[3] *Sharoop Dass Mondul* v. *Joggessur Ray Chowdhury* [1899], I. L. R., 26 Cal. 564 (F. B.).

ultimately came into the possession of the plaintiff (a third party), who brought a suit against the defendant to eject him from a portion of the land on the allegation that he himself was an occupancy-*raiyat*, and the latter was merely his under-*raiyat*. The defendant's contention was that his holding was that of an occupancy-*raiyat*, and that the plaintiff was a tenure-holder. It appeared in the course of the suit that the defendant's father had purchased a portion of the holding, and his purchase had been recognized by the predecessor in title of the plaintiff; that the defendant and his father had been always treated as occupancy-*raiyats*; and that, since the purchase by *H*, the land was entirely occupied by *raiyats*. It was *held* that, although the original grantee was a *raiyat* within the meaning of section 5 of the Bengal Tenancy Act, *H* and his successors in interest had practically converted themselves into rent-receivers, and recognized the defendant and his predecessor as occupancy-*raiyats* not liable to be ejected; and that consequently the plaintiff's action must fail.[1]

Denial by tenant of his landlord's title. Bengal Act VIII. of 1869.

Although there was no provision in Bengal Act VIII. of 1869 declaring that a tenant denying his landlord's title should forfeit his tenancy, it was held in several cases, which proceeded chiefly upon considerations of the English Law, that such a denial would cause a forfeiture of the tenancy, and make the tenant liable to be ejected on that ground. Thus, where, in a suit by a landlord for arrears of rent, the tenant denied that he held under the plaintiffs, and the action was withdrawn, and another brought for the ejectment of the *raiyat* on the ground that, by his denial of the tenancy, he had lost all claim to be treated otherwise than as a trespasser, it was held[2] that the landlord was entitled to a decree for possession. This is no longer the law.

Nor was it open to a defendant to change the whole nature of his defence at the last moment, and to set up in a Court of

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[1] Second appeal 704 of 1899 decided on 18th June 1901 (unreported).

[2] *Dabee Misser* v. *Munger Meah* [1878], 2 C. L. R. 208; *Satyabhama Dassee* v. *Krishna Chunder Chatterjee* [1880], I. L. R., 6 Cal. 55.

Appeal a plea which he had directly and fraudulently repudiated in the Court below.[1]

Under the present law, in all the cases to which it applies, there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord.[2] But, if the denial was before the Bengal Tenancy Act came into force, it would operate as a forfeiture.[3] See notes to section 44, *post*. See also section 186A, which provides a penalty for denial of landlord's title in case title in another person is set up.

Penalty under the present law.

Vide section 186A.

Under the old law a *raiyat* was liable to ejectment for non-payment of rent.[4] The Courts, however, were by no means clear as to the effect of non-payment of rent on the status of the *raiyat*. At one time it was thought that, in order to maintain the right of occupancy already acquired, payment of rent was necessary,[4] so that, where a *raiyat*, who had been out of possession for some years, sued to recover his holding, and failed to show payment of rent during the period of dispossession, it was held[5] that he had no subsisting right of occupancy. In another case, however, it was held[6] that mere non-payment of rent, taken by itself, was not sufficient to warrant the conclusion that there was no subsisting right of occupancy although the fact that the *raiyat* had for a long time ceased to cultivate the lands, coupled with the non-payment of the rent, might give rise to the inference that he had relinquished the holding.

Liability to ejectment for non-payment of rent under the old law.

The effect of non-payment of rent under the old law on the status of an occupancy-raiyat.

All these difficulties have disappeared under the present enactment, for, under section 65 of the Bengal Tenancy Act, an occupancy-*raiyat*, like a permanent tenure-holder and a *raiyat* holding at fixed rates, cannot be ejected for arrears of rent,

Under the present law, no ejectment for non-payment of arrears of rent.

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[1] *Satyabhama Dassee* v. *Krishna Chunder Chatterjee* [1880], I. L. R., 6 Cal. 55.

[2] *Debiruddin* v. *Abdur Rahim* [1888], I. L. R., 17 Cal. 196.

[3] *Ananda Chandra Mandal* v. *Abraham Soleman* [1899], 4 Cal. W. N. 42.

[4] *Narain Rai* v. *Opint Misser* [1882], I. L. R., 9 Cal. 304: S. C., 11 Cal. L. R. 417.

[5] *Hem Chandra Chaudri* v. *Chand Akund* [1885], I. L. R., 12 Cal. 115.

[6] *Nilmani Dassi* v. *Sanatun Doshayi* [1887], I. L. R., 15 Cal. 17.

but his holding is liable to sale in execution of a decree for the rent thereof.[1]

The effect of a transfer of a non-transferable holding under the old law.

Under the old law, so long as the rent was paid by the recorded tenant or his heirs, or in his or their names, the mere transfer of a non-transferable holding did not give the landlord a right to take possession of the land.[2] And it was held[3] that an unrecognized transfer of such a holding did not operate as a forfeiture of the tenancy. But, when an occupancy-*raiyat* sold his holding, gave up possession, and disclaimed all interest in it, his right of occupancy ceased, and the landlord became entitled to eject the transferee.[4]

Under the present law also transfer of an occupancy-holding in whole or part is no ground for forfeiture.

Act VIII. of 1885 recognizes the same principle, and the transfer by an occupancy-*raiyat* of the whole or part of his holding is not a ground of forfeiture.[5] But he would remain liable for the whole rent unless the transfer is recognized by the landlord. Where a *raiyat* sold off a defined portion of his tenancy, and made over possession of the same to the purchaser, and there was no evidence to show that he had refused to pay the rent for his holding, the Full Bench considered[6] that the question, whether the landlord was entitled to re-enter upon the land sold by the tenant, did not arise.

But where he transfers the holding and ceases to pay rent, the landlord is entitled to eject the transferee.

But, as under the old law, if a tenant transfers his holding, ceases to pay rent for it, and accepts a new tenancy from the transferee, the landlord is entitled to eject the transferee as a

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[1] See cases under s. 45 *post*.

[2] *Jai Krishna Mukerji* v. *Raj Krishna Mukerji* [1866], 5 W. R. 147.

[3] *Gora Chand Mostaffi* v. *Baroda Prosad Mostaffi* [1869], 11 W. R. 94: 13 B. L. R. 279 note; *Soddai Parira* v. *Baistab Parira* [1871], 15 W. R. 261: 12 B. L. R. 84 note; *Dwarka Nath Misra* v. *Kanai Sirdar* [1871], 16 W. R. 111.

[4] *Subodra* v. *Smith* [1873], 20 W. R 139: S. C., 12 B. L. R. 82; *Narendra Narain Rai* v. *Ishan Chandra Sen* [1874], 22 W. R. 22; 13 B. L. R. 274; *Dwarka Nath Missra* v. *Narish Chandra* [1879], I. L. R., 4 Cal. 925; *Srishtidhur Biswas* v. *Madan Sardar* [1883], I. L. R., 9 Cal. 648.

[5] *Kabil Sardar* v. *Chandra Nagchowdhary* [1893], I. L. R., 20 Cal. 590 (followed in *Bansi Das* v. *Jugdip Narain Chowdhry* [1896], I. L. R., 24 Cal. 152); *Durga Prosad Sen* v. *Doula Gasee* [1894], 1 C. W. N. 160; *Shaik Gasaffer Hossain* v. *E. Dalglish* [1896], 1 C. W. N. 162.

[6] *Kissen Persad Sahi* v. *Tripe* [1896], 2 Cal. W. N. cliv.

trespasser.[1] A tenant having a right of occupancy cannot create a tenure intermediate between himself and the landlord.[1]

A *raiyat* who has a right of occupancy is entitled to the benefit of section 4, clause *1*, of Regulation XI. of 1825 (Alluvion).[2] **An occupancy-raiyat entitled to accretions to his holding.**

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which, under the law of inheritance to which the *raiyat* is subject, his other property goes to the Crown, his right of occupancy shall be extinguished. **Devolution of occupancy-right on death.**

Cf. section 5, *ante*, and sections 86, 164 to 166, *post*. **References.**

By this section an occupancy-right, whether transferable or not, is declared to be heritable "subject to any custom to the contrary," the *onus* of which must lie on the person alleging that it is not heritable. The section thus clears away all doubts regarding the heritability of occupancy-holdings which were expressed by the Courts under the old law.[3] **Principle.**

The Calcutta High Court has held[4] that the heirs of a deceased occupancy-*raiyat* are liable for the rent of the holding, whether they hold it or not, unless they have surrendered it or "done something from which a surrender in the terms of section 86 can be presumed." This is at variance with the view taken by the Allababad High Court,[5] which seems to hold that, before the heirs of a deceased occupancy-*raiyat* can be made **Liability of the heirs of a deceased occupancy-raiyat.**

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[1] *Kali Nath Chakravarti* v. *Upendra Chundra Chaudhri* [1896], I. L. R., 24 Cal. 212: S. C., 1 C. W. N. xii., 163.

[2] *Gourhari Kaibarto* v. *Bhola Kaibarto* [1894], I. L. R., 21 Cal. 233; see also *Gobind Monee Debia* v. *Dinobundhoo Shaha* [1871], 15 W. R. 87; *Attimollah* v. *Saheboollah* [1871], 15 W. R. 149; *Bhugoobati Pershad Singh* v. *Durg Bijai Sing* [1871], 8 B. L. R. 73: S. C., 16 W. R. 95.

[3] *Ajudhya Prosad* v. *Imam Bandi Begum* [1867], 7 W. R. 528; *Jatiram Sarmah* v. *Manglu Sarmah* [1868], 8 W. R. 60.

[4] *Peary Mohun Mukerjee* v. *Kumar Chunder Sarkar* [1892], I. L. R., 19 Cal. 790.

[5] *Lekhraj Singh* v. *Rai Singh* [1892], I. L. R., 14 All. 381.

liable, it must be shown that they have accepted the tenancy or attorned to the landlord.

Extinction of the right of occupancy.

When an occupancy-*raiyat* dies without leaving any heir, and the Crown becomes the *ultimus hæres*, the occupancy-right becomes extinguished. In other words, the Crown does not acquire the occupancy-right.

Right of an occupancy-raiyat to devise his holding by will, dependent on local usage.

Section 11 of the Act declares that "every permanent tenure shall be capable of being bequeathed in the same manner and to the same extent as other immoveable property." There is no such provision with respect to occupancy-holdings, nor is there any reference to the subject in any of the sections, beyond the provision contained in section 178, sub-section (*3*), cl. (*d*), that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of an occupancy-*raiyat* to transfer or bequeath his holding in accordance with local usage."

It is clear, therefore, that the right of an occupancy-*raiyat* to devise his holding by will stands in the same position as his right to make any other alienation, and would be dependent on local usage. What is local usage will be considered when dealing with section 183, *post*.

Right of heirs to sue for recognition.

The heirs of an occupancy-*raiyat* recorded in the landlord's *serishta* are entitled, by the provisions of section 26, to claim recognition, and, if that is refused, to maintain a suit for the purpose.[1]

Cf. the old law and section 178, sub-sections (*2*) and (*3*), cl. (*d*), and section 183, *Illustration* (*1*), *post*.

Transferability of occupancy-rights. Principle.

Although occupancy-rights are expressly made heritable by the provisions of section 26, "subject to any custom to the contrary," the Legislature has left the question of transferability to be decided upon the basis of custom or local usage. If the holding is transferable by custom, in that case alone can a

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[1] *Ananda Kumar Naskar* v. *Hari Das Haldar* [1900], I. L. R., 27 Cal. 545.

raiyat transfer it by gift, sale, or otherwise. Again, the *onus* is on him to prove custom or local usage.[1]

Usage of transferability saved by the Act.

Another matter in connection with this subject, which deserves attention, is the express declaration contained in Illustration (1) to section 183 that—

A usage, under which a *raiyat* is entitled to sell his holding without the consent of his landlord, is not inconsistent with, and is not, expressly or by necessary implication, modified or abolished by the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

The right of transferability by custom cannot be taken away by contract under the present law.

If the right is transferable by custom or local usage, it will not be destroyed or taken away by any contract entered into between the landlord and the tenant; but the protection extends only as against contracts "made after the passing of the Act"—see section 178, sub-section (*3*), cl. (*d*).

The old law on the subject of transferability.

Under the old law, occupancy-rights were not transferable against the will of the landlord save by custom, not mere usage.[2] It was thought "that the custom of the country or the locality alone conferred the right of transfer of such holding without the consent of the landlord;" of course, when holdings were put up to sale in execution of decrees at the instance of the landlord as decree-holder, the transfer so effected was presumed to be made with his consent, but, when the sales were in execution of decrees by third parties, the right of transfer without such consent was disputed. Under the old law, therefore, a transfer, whether by a voluntary sale or gift, or by a sale in execution of a decree, was

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[1] *Mussumat Shankarpatti Thakurani* v. *Saifulla Khan* [1872], 18 W. R. 507; *Kripamoyi Dabia* v. *Durga Gobind Sircar* [1887], I. L. R., 15 Cal. 89.

[2] *Hurro Mohan Mukerji* v. *Lalan Moni Dassi* [1864], 1 W. R. 5, *Juggut Chunder Rai* v. *Ram Narain Bhuttacharjee* [1864], 1 W. R. 126; *Sriram Basu* v. *Bishonath Ghosh* [1865], 3 W. R. (Act X. Rulings), p. 3; *Ajudhya Pershad* v. *Imambandi Begum* [1867], 7 W. R. 528; *Chandrabati Koer* v. *Harrington* [1891], I. L R., 18 Cal 349: S. C., L. R., 18 I. A. 27; *Durga Sundari* v. *Brindaban Chandra Sarkar* [1869], 11 W. R. 162: 2 B. L. R. (App.) 37; *Nanku Rai* v. *Mahabir Prasad* [1869], 11 W. R. 405: 3 B. L. R. (App.) 35; *Annapurna Dasi* v. *Uma Charan Das* [1872], 18 W. R 55; *Shankarpatti Thakurani* v. *Saifulla Khan* [1872], 18 W. R. 507; *Buti Singh* v. *Murat Singh* [1873], 20 W. R. 478: 13 B. L. R. 284 (note); *Narendro Narain Rai* v. *Ishan Chandra Sen* [1874], 22 W. R. 22: 13 B. L. R. 274.

The old law on the subject of transferability (*contd.*).

not sustainable in the absence of a clear and well-defined custom to that effect,[1] and, when a *raiyat* sold his holding, the right of occupancy ceased, and he could not protect the purchaser from ejectment.[2]

If the transfer was by an execution-sale, the auction-purchaser acquired no right of occupancy "where the right was not dependent on custom, but is a mere creature of the Rent Law."[3]

It followed therefore that, when there was no custom or local usage by which occupancy-rights were transferable, an execution-sale of the holding was not valid, either against the landlord or the tenant; in fact, conveyed no title to the vendee.[3] And the same principle was held to be applicable to transfers not *invitum* such as a voluntary sale or gift; for the Courts considered there was no ground for distinguishing a voluntary sale from a sale in execution, for, "if a sale by private contract would validly pass it, then a sale in execution would equally pass it, and *vice versâ*."

The existence of a custom, however, in a particular district, by which rights of occupancy are transferable in that district, was held not to justify the holder of such a right in sub-dividing his tenure, and transferring different parts of it to different persons; and, in case of such transfer, the *zamindar* was entitled to treat the transferees as trespassers, and eject them.[4]

Recognition of the transferee by the landlord under the old law.

Under the old law, a transfer of an ordinary *raiyati* holding was not required to be registered in the landlord's *serishta*;[5] therefore, when, in a suit for enhancement brought by the landlord against the *raiyat*, it was found that the defendant had sold to a third party his holding, which was transferable by custom, and the landlord had received rent from the third party, and was

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[1] *Dwarkanath Misser* v. *Hurrish Chunder* [1879], I. L. R., 4 Cal. 925.
[2] *Norendra Narain Ray* v. *Ishan Chunder Sen* [1874], 22 W. R. 22.
[3] *Kripanath Chaki* v. *Dyal Chand Pal* [1874], 22 W. R. 169.
[4] *Tirthanund Thakoor* v. *Mutty Lall Misser* [1878], I. L. R., 3 Cal. 774.
[5] *Taramoni Dasi* v. *Bireshur Mukerjee* [1864], 1 W. R. 86; *Horo Mohun Mukerji* v. *Chintamoni Roy* [1864], 2 W. R. (Act X), p 19; *Karoo Lal Thakoor* v. *Luchmiput Dugor* [1867], 7 W. R. 15; *Uma Churn Sett* v. *Hari Prosad Misra* [1869], 10 W. R. 101; *Jaikrishna Mukerji* v. *Durganarain Nag* [1869], 11 W. R. 348.

aware of the transfer, it was held that the connection of the defendant with the holding had come to an end."[1]

Effect of receipt of rent from the transferee under the old law.

Receipt of rent from the transferee of a non-transferable holding validated the transfer; where a *zamindar* was found to have received rent from a party as holder of a tenure, it was held that he could not draw back and ignore the position of such party.[2] Also, where he had allowed the sums paid into the Collectorate by a third party to be carried to his credit, he was held to have clearly recognized the transfer for the third party; so also, where the *zamindar* has made the transferee a party to the suit,[3] and obtained a decree against him jointly with others.[4] But, in order that this doctrine of estoppel should apply, it was held that it must appear that the *zamindar* knew of the transfer, and that rent was received with such knowledge.[5]

Receipt of rent through a *marfatdar* was held not to amount to a recognition;[6] and in one case[7] the Court went so far as to hold that payments to a *gumashta* and receipt of rent by him on behalf of his employer were not binding on the landlord. But this would clearly depend on the authority of the *gumashta*. If he acted within the ordinary scope of his authority, there is no reason why the *zamindar* should not be bound by his acts. Compare section 88, *post*, (as amended) on this question.

The present law as to transferability.

Under the present Act, rights of occupancy may be transferable either by custom or by local usage. If the transfer is in accordance with the usage prevailing in the locality, it would be

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[1] *Abdul Asis Khan* v. *Ahmed Ali* [1887], I. L. R., 14 Cal. 795.

[2] *Nobokumar Ghosh* v. *Krishna Chundra Banerjee* [1864], W. R., Sp. No. (Act X.), 112; *Mirtunjoy Sarkar* v. *Gopal Chunder Sarcar* [1868], 10 W. R. 466; *Amin Bux* v. *Bhairo Mandul* [1874], 22 W. R. 493; *Bhurat Rai* v. *Ganga Narain Mahapator* [1870], 14 W. R. 211; *Allender* v. *Dwarka Nath Rai* [1871], 15 W. R. 320; *Mahomed Asmal* v. *Chandi Lal Pandey* [1867], 7 W. R. 250.

[3] *Ramgobind Roy* v. *Dushobhojah Debee* [1872], 18 W. R. 195.

[4] *Ramkisshore Acharji Chowdhry* v *Krishno Moni Debia* [1874]. 22 W. R. 106.

[5] *Gour Lall Sarkar* v. *Rameshur Bhumik* [1871], 6 B. L. R. (App.) 92.

[6] *Khudiram Chatterji* v. *Rukhini Boishtobi* [1871], 15 W. R. 197.

[7] *Bhojohari Banik* v. *Aka Ghulam Ali* [1871], 16 W. R. 97.

Usage.

valid without the consent of the landlord.[1] What the meaning of "usage" is in this connection has been considered in a number of cases. In the first place, it does not need "the antiquity, the uniformity, or the notoriety of customs;" and again "it is enough if it appears to be so well-known and acquiesced in that it may reasonably be presumed to have been an ingredient tacitly imported by the parties into their contract." The Act has made no change in the *onus* of proof; and the burden, therefore, of proving the usage is, as before, on the person who sets it up.[2]

What must be proved to make it binding on the landlord.

In order that it may be binding on the landlord, it is necessary to show that the usage exists on his estate, or that it was so prevalent in the neighbourhood that it can reasonably be presumed to exist on that estate.[1]

No suit maintainable by a transferee to enforce registration of his name in the landlord's serishta.

Under the present Act the transferee of a holding of a *raiyat*, the right of occupancy in which is transferable by custom, cannot maintain a suit for registration of his own name in the landlord's *serishta* by expunging that of the vendor.[3] As a rule, the landlord requires the payment of a *salami* before he consents to enter the name of the transferee in his *serishta*.

Transferor and transferee jointly liable for rent until notice.

When such a transfer is made without the consent of the landlord, the transferor and transferee are jointly and severally liable to the landlord for arrears of rent accruing after the transfer until notice of the transfer is given to the landlord (see section 73, *post*).

An occupancy-holding is tangible immoveable property.

An occupancy-holding is tangible immoveable property, and when the right is transferable by custom, its sale or transfer can therefore be effected either by a registered document or by delivery of possession—see section 54 of the Transfer of Property Act (IV. of 1882).

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[1] *Palakdhari Rai* v. *Manners* [1895], I. L. R., 23 Cal. 170.

[2] *Shankarpatti Thakurani* v. *Saifullah Khan* [1872], 18 W. R. 507; *Kripamoyi Debia* v. *Durga Gobind Sircar* [1887], I. L. R., 15 Cal. 80.

[3] *Ambika Prasad Chaudhri* v. *Keshri Sahai* [1897] I. L. R., 24 Cal. 612.

In the absence of custom or local usage to the contrary, a *raiyati* holding in which a *raiyat* has only a right of occupancy is not saleable at the instance of the occupancy-*raiyat* or any creditor of his other than his landlord seeking to obtain satisfaction of his decree for arrears of rent.[1]

An occupancy-holding not transferable by custom is saleable only at the instance of the landlord.

Although section 26 does not deal with the subject of sub-letting, it is clear from the general tenor of the Act that it proceeds on the assumption that an occupancy-*raiyat* has the right to sublet his holding; see notes under sections 48, 49, 85, and section 178, sub-section (*3*), cl. (*e*), *post*.

Right of an occupancy-raiyat to sublet his holding.

Enhancement of Rent.

27. The rent for the time being payable by an occupancy-*raiyat* shall be presumed to be fair and equitable until the contrary is proved.

Presumption as to fair and equitable rent.

Cf. section 5 of Act X. of 1859 and section 5 of Bengal Act VIII. of 1869, and sections 29, 35, and 50, *post*.

References.

From the natural relation of the parties, a tenant is bound to pay rent for his holding at fair and equitable rates (see section 24, *ante*). Section 27 declares that the rent for the time being payable shall be presumed to be fair and equitable until the contrary is proved. The benefit of the presumption is in favour of the tenant, the object of the enactment being to protect him against arbitrary enhancement (see notes to section 24, *ante*, page 158).

Principle.

Under the old law it was held[2] that "fair and equitable rent" meant, not the rate obtainable by open competition, but the prevailing rate payable by the same class of *raiyats* for land of a similar description, and with similar advantages, in the places adjacent. Also that "what is fair and equitable depends on the value of the produce and cost of production."[3]

Meaning of "fair and equitable rent" under the old law.

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[1] *Bhiram Ali Shaik Shikdar* v. *Gopi Kanth Shaha* [1897], I. L. R., 24 Cal. 355.

[2] *Thakooranee Dassee* v. *Bireshur Mookerjee* [1864], 3 W. R. (Act X.), p. 29: S. C., B. L. R., F. B., 202.

[3] *Issur Ghose* v. *Hills* [1864], W. R., Sp. No., 148; *Hills* v. *Jendar Mundal* [1864], 1 W. R. 3.

Existing law.

Section 51, *post*, lays down a general presumption as to the amount of rent and other conditions of any tenancy in any year.

Under the existing law the fair and equitable rent is presumed to be the rent for the time being payable until the contrary is proved, and the contrary can be proved by proof of the grounds of enhancement mentioned in sections 30 to 34, subject to section 35, or of the grounds of reduction mentioned in section 38.

"Payable" means only lawfully payable.

As, by the definition in section 3 (*5*), 'rent' is what is *lawfully* payable, it follows that an illegally-enhanced rent (*e. g.*, one that has been enhanced by more than 2 annas in the rupee) cannot be held to be fair and equitable, no matter for how long it has been realized.

Restriction on enhancement of money-rents.

28. Where an occupancy-*raiyat* pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Reference

Cf. sections 29, 40, 40A, and 50, *post.*

Principle.

The object of the Legislature in enacting this section was to prevent the capricious enhancement of rents which was and is common in some parts of Bengal. Section 28 debars an enhancement of rent paid in money except by suit or by contract, which again is subject to the limitations imposed by section 29.

Produce-rents.

Produce-rents do not come within the purview of this section. But the landlord or tenant may apply under section 40, *post*, to commute produce-rent into money-rent. See also section 40A, *post.*

The old law relating to produce-rents.

Present law, s. 40.

Under the old law the fact of the *raiyat* having paid in kind for a number of years was held to be no bar to enhancement.[1] Section 40 of the present Act lays down various rules governing commutations. Under the old law it was also held[2] that *bhaoli* rent, which varied yearly in amount with the varying amount of the gross produce of the land, though fixed as to the

[1] *Thakoor Pershad* v. *Nawab Syed Mohammed Bakir* [1867], 8 W. R. 170.

[2] *Mohamed Yacoob Hossain* v. *Shaikh Chowdhry Wahed Ali* [1865], 4 W. R. (Act X.), p. 23.

proportion which it was to bear to such produce, was not a fixed unchangeable rent to which provisions of section 4, Act X. of 1859, were applicable.

It will be observed that section 29 and section 178, *post*, place no restriction on the enhancement of produce-rent by contract out of Court.

Enhancement of rent by contract.

29. The money-rent of an occupancy-*raiyat* may be enhanced by contract, subject to the following conditions :—

(*a*) The contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the *raiyat*;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows :—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the

raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the *raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the *raiyat* from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

References. *Cf.* sections 76 to 83, *post.*

Limitations on contractual enhancements. This section lays down the limitations on contractual enhancements. In the first place (*a*), the contract must be in writing and registered. The reason of such a rule is obvious. In the second place (*b*), even when the conditions of clause (*a*) are complied with, the enhancement must not exceed by more than two annas in the rupee the rent previously payable. Thirdly (*c*) the rent fixed by contract shall not be enhanceable for fifteen years; in other words, if once rent has been enhanced by contract, no further enhancement can take place for fifteen years from that day. The object of this provision was to give the *raiyat* a certain degree of security against frequent attempts to enhance. The fifteen-year rule applies to enhancement by suit (see section 37, *post*), as well as by contract, and it has also been extended to cases in which produce-rents have been commuted to money-rents.—*See* section 40A, *post.*

The provisos, however, control and modify the limitations imposed by the clauses (*a*), (*b*), and (*c*). The effect of proviso (i) is that, where a contract is not proveable, because it is not in writing, or because it is not registered, the landlord is not debarred from recovering rent at the rate at which rent has been paid continuously for three years or more "immediately preceding the period for which the rent is claimed." But this Proviso (i) does not extend to clause (*b*) or (*c*).[1] Accordingly, no length of payment of a rent illegally enhanced (*e. g.*, enhanced by more than two annas in the rupee, *or* within fifteen years of a previous enhancement) can make such illegally enhanced rent recoverable by suit.

Effect of proviso (i).

That this is the correct interpretation of this section is now settled beyond doubt. In a recent ruling[2] of the High Court, this was very clearly expressed:—

> It may be here explained that the provisions of section 29 of the Tenancy Act have always been obnoxious to the landlords of Bengal. Soon after the passing of Act VIII. of 1885, they endeavoured to evade them by entering into compromises with their tenants. The ruling of this Court in the case of *Sheo Sahoy Panday* v. *Ram Rachia Roy*[3] gave some countenance to this practice, to which recent legislation in Act I. of 1907 (B. C.) is intended to put an end. * * * * *
>
> It has been clearly held[4] that leases executed in contravention of the provisions of section 29 of the Act are void, not voidable . . . . Rent has been paid under them in one case for about eleven years, but this does not make legal and operative an illegal and void contract.

Proviso (ii) saves contracts to pay rent at enhanced rates in consideration of an improvement to be effected by or at the expense of the landlord, and to the benefit of which the *raiyat* is not otherwise entitled. But this proviso is qualified by the condition that the contract to pay enhanced rent in consideration of

Proviso (ii).

Qualification.

[1] *Bipin Behari* v. *Krisnadhone Ghose*, I. L R., 32 Cal. 395 (*Mathura Mohan Lahiri* v. *Mati Sarkar*, I. L. R., 25 Cal. 781, dissented from).

[2] *Manindra Chandra Nandi* v. *Upendra Chandra Hazra* [1908], I. L. R., 36 Cal. 604.

[3] [1891], I. L. R., 18 Cal. 33.

[4] *Probat Chandra* v. *Chirag Ali* [1906], I. L. R., 33 Cal. 607.

an improvement shall be operative only when the improvement has been effected, and only so long as it exists and substantially produces its estimated effect in respect of the holding, except when the *raiyat* is chargeable with default in respect thereof. In other words, to make the tenant liable for enhanced rent for an improvement, it must appear (1) that it is in respect of his holding; (2) that it has been or is to be effected by or at the expense of the landlord; (3) that the tenant was not otherwise entitled to its benefit; (4) that it must actually be carried out; (5) and that the liability should last only so long as the improvement exists, and substantially produces the estimated effect in consideration of which the enhanced rent was contracted for, provided, of course, the tenant himself has done nothing to interfere with the improvement.

Proviso iii).

Proviso (iii) refers to a totally different class of cases. It sometimes happens in different parts of the country that the *raiyats* hold lands at specially low rates in consideration of cultivating for the convenience of the landlord a particular crop, such as, indigo. If the *raiyat* agrees to pay enhanced rent in order to be freed from that obligation, clause (*b*) would not affect the agreement.[1]

Scope of the section—enhancement.

But the section applies only to the case of increase in the rate of rent, which is ordinarily designated "enhancement of rent"; whereas an increase in the rent by reason of increase in area is not called "enhancement of rent," but is styled "alteration of rent."[2]

Contract to pay enhanced rent by more than two annas when void in toto.

Such a contract not severable.

A contract to pay a rent enhanced by more than two annas in the rupee, except in the cases covered by the provisos (ii) or (iii), is void *in toto*; and such a contract is not severable in character so as to justify the Court in making a decree to the

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[1] An actual instance of how this proviso works is given in the Purnea Final Report, pp. 66, 67, paras. 213 to 217.

[2] *Satis Chundra Giri* v. *Kabiruddin Mullick* [1899], I. L. R., 26 Cal., p. 233.

extent allowable by law, that is, to allow so much of the enhanced rent as does not exceed the two annas in the rupee.[1]

But a stipulation by the tenant to pay a certain amount of rent agreed upon by the parties in settlement of *bonâ-fide* differences between him and the landlord regarding the amount and character of the existing rent, and to avoid further litigation, is not an agreement to enhance within the meaning of clause (*b*).[2] This ruling is applicable only in cases on all fours with those cited.[3]

Stipulation to pay a certain amount of rent to avoid litigation.

Where a *raiyat* holds a certain quantity of land, part only of which is culturable, and agrees to pay rent at a stipulated rate for the culturable area, binding himself to pay at the same rate for the rest of the land when brought under cultivation, it has been held[4] that such a contract does not fall within the provisions of section 29, and that a suit by a co-sharer landlord to recover on the entire holding at the rate mentioned in the *kabuliat* was maintainable.

Contract to pay rent for additional area brought under cultivation.

The learned Judges held that the action—

> Was clearly not one for enhancement of rent in the sense in which the term is used in the Bengal Tenancy Act, nor was it a suit for additional rent for excess land within the meaning of section 52 of that Act; and, if the plaintiff is entitled to realize his share of the rent separately, as he admittedly is, there is no reason why he should not be entitled to claim separately the rent that is payable, not upon any fresh adjustment of the rent inconsistent with the continuance of the old tenancy, but upon an ascertainment of the rent payable in accordance with the terms of the original letting.

The provisions of clause (*b*) are not applicable to contracts made before the passing of this Act.[5] Where a *kabuliat* executed in 1881 stipulated that, on the expiry of the term of the lease (seven years), a fresh lease would be executed, and that, if the

Clause (b) not applicable to contracts made before the passing of the Act.

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[1] *Kristo Dhone Ghose* v. *Brojo Gobindo Roy* [1897], I. L. R., 24 Cal. 895: S. C., 1 C. W. N. cxix, 442.

[2] *Sheo Sahoy Panday* v. *Ram Rachia Roy* [1891], I. L. R., 18 Cal. 33; *Nath Sing* v. *Damri Sing* [1901], I. L. R., 28 Cal. 90.

[3] *Probat Chandra* v. *Chirag Ali* [1906], I. L. R., 33 Cal. 607. *See* also *Manindra Chandra Nandi* v. *Upendra Hasra* [1908], I. L. R., 36 Cal. 604.

[4] *Ram Chunder Chukrabutty* v. *Giridhur Dutt* [1891], I. L. R., 19 Cal. 755.

[5] *Tejendra Narain Singh* v. *Bakai Singh* [1895], I. L. R., 22 Cal. 658.

raiyat cultivated the lands without executing a fresh lease, he would pay rent at the rate of Rs. 4 per *bigha* (a rate much higher than that fixed for the first term), it was *held*[1] that the stipulation was in the nature of a penalty, and could not be enforced.

Liability of one of several tenants executing a kabuliat for the whole ote.

The contractual liability of a tenant is limited to his actual interest in the holding; and accordingly it has been held[2] that, where one of several tenants executed a *kabuliat* for the whole of the *jote*, he was not liable for rent or bonus in respect of any share exceeding his own.

Decisions under the old law

Stipulation in the patta to pay increased rent.

Under the old law it was held[3] that, where a *patta*, in its terms, expressly stipulated for an increase of rental according as lands let were brought under cultivation and a measurement made, the landlord was entitled to recover such increased rent as agreed upon in the *patta* without serving upon the tenants any notice under section 14 of Bengal Act VIII. of 1869.

Where the plaintiff, after obtaining a decree for assessment of enhanced rent, entered into an arrangement with the tenants for payment of rent at a reduced rate for a certain term, and, on the expiration of the period, the plaintiff sought to recover rent from the defendants at the rate settled by a decree of 1864, it was held[4] that the decree had been superseded by the subsequent arrangement, and that the plaintiff could not recover rent at an enhanced rate except under the provisions of Bengal Act VIII. of 1869.

Conversion of cash to produce-rent not

It has been held[5] that an enhancement of rent under the Bengal Tenancy Act must mean an enhancement of the same

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[1] *Tejendra Narain Singh* v. *Bakai Singh* [1895], I. L. R., 22 Cal. 658.

[2] *Ram Taran Chatterji* v. *Asmatullah Shaikh* [1901], 5 C. W. N. ccxxiv.

[3] *Nistarini Dasi* v. *Bonomali Chatterji* and *Dinonath Das* v. *Bonomali Chatterji* [1879], I. L. R., 4 Cal. 941; *Dwarkanath Bideabhusan* v. *Baburam Luskur* [1882], 11 C. L. R. 320. See also *Huro Prosad Roy Chowdhry* v. *Chundee Churn Boyragee* [1883], I. L. R., 9 Cal. 505: S. C., 12 C. L. R. 251; *Soorascondery Dabee* v. *Golam Ali* [1872], 19 W. R. 141. See also *Burhunuddi Howladar* v. *Mohun Chunder Guha* [1881], 8 Cal. L. R. 508.

[4] *Nobin Chunder Sircar* v. *Gour Chunder Shaha* [1881], I. L. R., 6 Cal. 759: S. C., 8 Cal. L. R. 161.

[5] *Hasan Kuli Khan* v. *Nakchedi Nonia* [1906], I. L. R., 33 Cal. 200.

kind of rent. A conversion of *nakdi* into *bhaoli* therefore cannot be regarded as an enhancement within the meaning of section 29 of that Act. Where the Subordinate Judge left out of account an important portion of the evidence relied upon by the plaintiffs, namely, canal rate collection papers, it was held that this was an error of law and a ground of second appeal to the High Court.

contemplated by section 29.

30. The landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely)—

Enhancement of rent by suit.

(*a*) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village, or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the

river practicable when it was not previously practicable.

References.

Cf. section 17 of Act X. of 1859 and section 18 of Bengal Act VIII. of 1869, and sections 31 to 35 and section 37, *post.*

The term "landlord" is defined in clause (*4*), section 3, *ante*, page 51.

The clause (*a*) printed above was substituted for the original clause (*a*) by Bengal Act III. of 1898, section 2. The only difference between the old and the new clause is that the latter adds the words "or in neighbouring villages."

Principle.

The previous section laid down the principles regulating the enhancement of rent by *contract.* The present section deals with the grounds upon which the landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of the Act, institute a suit to enhance the rent.

Application of the section.

It will be noticed that the provisions of this section are applicable only to money-rents of occupancy-*raiyats.* Undivided shares in parcels of land do not constitute distinct holdings within the meaning of the Act;[1] the term as used here signifies an entire holding.[2] In a suit where enhancement was claimed only in respect of an undivided share of certain lands, it was held[3] that the action was not maintainable, as the undivided share did not fall within the definition of "holding" given in the Act.

The old law: suit by one of several proprietors.

Under the old law, it was held that one of several joint proprietors could, without making his co-sharers parties, bring a suit for enhancement of rent against *raiyats* holding under him, from whom he has been in the habit of realizing separate rents.[4] So the holder of a specific share in an estate not regularly partitioned could sue for enhancement of his share of the

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[1] *Hari Charan Bose* v. *Rajah Ranjit Singh* [1896], 1 Cal. W. N. 521.
[2] *Boidy Nath De Sarkar* v. *Shaikh Jhin* [1897], 2 Cal. W. N. 44.
[3] *Horibole Brohmo* v. *Tasimuddin Mondul* [1898], 2 Cal. W. N. 620.
[4] *Doorga Prosad Mytee* v. *Joy Narain Hazrah* [1877], I. L. R., 2 Cal. 474.

rent.[1] In another case,[2] however, a different view was expressed, and it was held that a suit would not lie to enhance the rent of an undivided fractional share of a holding of which the plaintiff alleged himself to be the landlord. This view was re-affirmed afterwards by a Full Bench, which held[3] that one co-sharer could not enhance the rent of his share when such an enhancement is inconsistent with the continuance of the lease of the entire holding. Where it has been arranged between the co-sharers of an estate and their tenant that he shall pay each sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share. In the absence of such an arrangement, no such suit could be maintained.

The present law: suit for enhancement must be brought by the sole landlord or by the general body of landlords.

Under the present Act, a suit for enhancement under section 30 must be brought either by the sole landlord, or by the general body of landlords if there are several. Fractional co-sharers cannot maintain such an action, even where the *raiyat* has executed a *kabuliat* in favour of the co-sharer landlord agreeing to pay his share of the rent separately. The enhancement must be made in accordance with law, and upon a properly-constituted suit.[4] See notes under section 188 and section 188A, *post*. The principle newly introduced in sections 148A and 158B does not apply to suits for enhancement of rent.

Enhancement by ijaradar.

Under the old law an *ijaradar* was held to be entitled to enhance the rent of *raiyats* holding under him where there was no condition or stipulation in his lease precluding him from doing so.[5] The same principle is applicable to cases arising

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[1] *Bhoyrub Mundle* v. *Ganga Ram Banerji* [1872], 17 W. R. 408; *Dinobundhu Chowdry* v. *Dino Nath Mookerji* [1873], 19 W. R. 168.

[2] *Rajchunder Mojoomdar* v. *Raja Ram Gope* [1877], 22 W. R. 385.

[3] *Guni Mahomed* v. *Moran; Doorga Proshad Mytee* v. *Joy Narain Hasra* [1878], I. L. R., 4 Cal. (F. B.) 961; S. C., 2 Cal. L. R. 370.

[4] *Gopal Chandra Das* v. *Umesh Narain Chowdhry* [1894], I. L. R., 17 Cal. 695; *Baidya Nath De Sircar* v. *Shaikh Jhin* [1897] 2 C. W. N. 44.

[5] *Doorga Prosad Myti* v. *Joynarain Hasrah* [1897], I. L. R., 2 Cal. 474; *Rustom* v. *Girdhari Tewari*, 2 Hay 394; *Durga Charan Chatterji* v. *Golak Chandra Biswas* [1875], 23 W. R. 228.

after the present Act came into force. But the enhancement must be within the statutory limits.

Enhancement by Hindu widow.

A Hindu widow in possession of her husband's estate, whether in her own right as widow, or as guardian of her minor son, is entitled to sue for enhancement.[1]

The old law: notice necessary previous to a suit for enhancement.

Under the old law, notice was necessary previous to bringing a suit for enhancement,[2] as section 13 of Act X. of 1859 was held to be applicable to all under-tenants and *raiyats*, and not merely to *raiyats*, whether having a right of occupancy or not.[3] In practice, it was found almost impossible to prove that "notices of enhancement" had been duly served, and so it was decided to do away with them entirely. The institution of a suit for enhancement is held to be sufficient.[4] Under the present Act no such notice is necessary, as the operation of a decree for enhancement under section 30 is regulated by section 154, *post*, and the *raiyat* is not hampered in his cultivation or in his capacity to pay the enhanced rent, a decree passed in a suit in the first eight months of an agricultural year ordinarily taking effect on the commencement of the agricultural year next following, and, if passed in a suit in the last four months of the agricultural year, ordinarily taking effect on the commencement of the agricultural year next but one following. But ample discretion is left to the Court to fix for special reasons any later date from which the decree should take effect.

Under the present law notice not necessary.

The prevailing rate.

The first ground for claiming enhancement is, that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring

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[1] *Surja Kanth Acharji* v. *Hemanto Kumari* [1892], I. L. R., 20 Cal (P. C.) 498.

[2] *Akhoy Sanker Chakravarti* v. *Raja Indrabhusun Deb Roy* [1869], 4 B L. R. (F. B.) 58: S. C., 12 W. R. (F. B.) 27; *D'Silva* v. *Raj Koomar Dutt*, 16 W. R. 153

[3] *Bakranath Mandal* v. *Binodram Sen* [1868]. 1 B. L. R (F. B.) 25: S. C., 10 W. R. (F. B.) 33.

[4] *See* Introduction: p. 30 (*4*), *ante*.

villages, and that there is no sufficient reason for his holding at so low a rate.

Reasons for the amendment made by section 30, clause (a).

The introduction of the words "or in neighbouring villages" has made an important modification in the substantive law regulating the enhancement of rent. The absence from the present Act of any definition of the expression "prevailing rate," combined with the fact that, in suits and proceedings for enhancement of rent on the ground of the prevailing rate, the Civil Courts and Revenue Officers were bound to confine their inquiries and comparisons of rates to the same village, rendered the original clause (*a*) ineffective for the purpose of enhancing rents. With the object of enlarging the area for comparison of rates, and making the provisions of the law "workable," the amendment was introduced and carried in the Bengal Council. It was stated at the time that the intention of the amendments proposed in sections 30 and 31 of the Act, and of the new sections 31A and 31B, was to effect that object, without, at the same time, endangering the interest of the tenants by making an average rate a prevailing rate, thus rendering it possible to level all the lower rates up to such average rate, while maintaining all the higher rates, however much in excess they might be of the average rate. It was also said that, under the new definition contained in section 31A, a prevailing rate would always be found where rates exist at all, and that its effect would be to greatly facilitate the enhancement of rents; but, "as rents were known to be already too high in certain districts, power is taken by Government to withhold the operation of the new definition from any district or part of a district. In order to guard against all the rates being levelled up to the maximum rate by manipulation of new prevailing rates from time to time, it is provided in section 31B that a prevailing rate once determined shall not be liable to enhancement except on the ground of rise in prices."[1]

[1] Para. 15 of Statement of Objects and Reasons dated 26th March 1897.

The amendment in section 30, clause (*a*), and the introduction of sections 31A and 31B were due to the view taken by the Calcutta High Court,[1] upon the construction of section 30, that the words "prevailing rate" were used in the Bengal Tenancy Act in the same sense as in the earlier cases under Act X. of 1859.

The old law: meaning of "prevailing rate."

Under the old law it was held[2] that the words "prevailing rate" meant the rate generally prevalent, or the rate paid by the majority of the *raiyats*, in the neighbourhood. It must be the rate paid by so large a majority of the same class of tenants for similar lands as would justify one in holding the rate to be the prevailing rate;[3] and not what the Court might consider to be "a fair rate."[4] If the prevailing rate is higher than the rent paid by the *raiyat*, though lower than the rate claimed in the plaint to be the prevailing rate, the Court ought to give a decree at the actual rate found to be paid by the neighbouring *raiyats*.[5] But fees payable to *patwaris* (*patwareen*) and *abwabs* must not be taken into consideration in determining the prevailing rate.[6]

Decisions under the old law.

The fact, that a rent-decree had been obtained against *raiyats* not having rights of occupancy, at a particular rate, was held[7] not sufficient to show that the rate so decreed was the rate prevailing in the neighbourhood. The rate claimed was required to be established by some direct testimony, and could not be decreed on mere hypothetical grounds, such as, the probability, or even the certainty, that, if the rents of the neighbouring occupants were re-adjusted, they would come up to the rate claimed.[8] But the evidence of three *patwaris*, who put in their *jamabandis* showing

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[1] *Shital Mondal* v. *Prossonno Moyi Debya* [1894], I. L. R., 21 Cal. 986.

[2] *Sadhoo Singh* v. *Ramanoograhalall* [1868], 9 W. R. 83.

[3] *Dhunraj Koonwar* v. *Oogurnarain Koonwar* [1871], 15 W. R. 2; see also *Samira Khatoon* v. *Gopal Lall Tagore* [1864], 1 W. R. 58; *Roshan Bibi* v. *Chandra Madhub Kar* [1871], 16 W. R 177; *Audh Bihari Singh* v. *Dost Mohammed* [1874], 22 W. R. 185.

[4] *Pilaram Kotal* v. *Nund Kumar Chattiram* [1866], 6 W. R. (Act X.) 45.

[5] *Akul Gazee* v. *Ameenoodeen* [1879], 5 C. L. R. 41

[6] *Burmah Chowdhry* v. *Sreenund Singh* [1869], 12 W. R. 29.

[7] *Sarahatunissa* v. *Gyani Buktour* [1869], 11 W. R. 142.

[8] *Brindaban De* v. *Bisona Bibi* [1870], 13 W. R. 107.

the rates paid by a majority of the *raiyats*, was held to be sufficient to prove the prevailing rate.[1] In one case[2] it was thought that, if a generally-prevailing rate could not be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the average of the different rates current in the village might be taken and treated as the prevailing rate. Generally speaking, however, the whole tenor of the decisions was to the effect that an average rate is not a prevailing rate. The above principles are of importance, and still hold good in districts to which the Government has not extended the provisions of section 31A.

Present law: meaning of "prevailing rate." It is not an "average."

In a case[3] under the present Act, it was held that the words "prevailing rate" in section 30, cl. (*a*), mean, not the average rate, but the rate actually paid and current in the village for land of a similar description with similar advantages; in other words, that the expression "prevailing rate" should be construed in the same sense in which it was used in the earlier cases under Act X. of 1859.

Procedure where there is no "prevailing rate."

But, where it is found that there is no one prevailing rate, and that the *raiyats*, except in a few isolated cases, holding land in the village of similar description, and with similar advantages, pay rent at varying rates, it has been held[4] that there is no rule which prevents the Court from taking under such circumstances the lowest rate as the prevailing rate.

The facts to be borne in mind in determining "prevailing rates."

As is well known, each village has lands of various descriptions, with particular names indicative of their crop-yielding capacities; some lands are better situated than the others. In judging, therefore, of the prevailing rate, the Court or officer called upon to determine the question of enhancement has to bear in mind the question of similarity, both in the character or description of the lands held by the *raiyat*, and in the relative advantages

[1] *Priag Lal* v. *Brockman* [1870], 13 W. R. 346.
[2] *Dina Ghasi* v *Mohini Mohun Das* [1874], 21 W. R. 157.
[3] *Shital Mondal* v. *Prossonno Moyi Debya* [1874], I. L. R., 21 Cal. 986.
[4] *Alep Khan* v. *Roghunath Prosad Tewari* [1896], 1 C. W. N., p. 310.

of the lands. The point for determination is, however, a question of fact, and no definite rule can be laid down with respect to it. In one case[1] under the old law, the Calcutta High Court considered that, if there was only a slight difference between the lands held by the defendants and the lands with reference to which their liability was adjudged, the rate of rent awarded on the latter basis might be considered as in conformity with "the spirit of the Rent Law." The correctness of this decision is open to question.

"No sufficient reason."

Before awarding enhancement, the Court must also find that there is no sufficient reason shown by the *raiyat* for his holding at "so low a rate." For example, jungle, waste, or marshy land might have been let to him for reclamation or bringing under cultivation at specially low rates. It would obviously be unjust and improper that, after he has made the land profitable, the landlord should be allowed to turn round, and claim enhancement. Again, the *raiyat* might belong to a class which, in accordance with local custom, is allowed to hold land at favourable rates of rent, or he may hold the land at favourable rates in consideration of his growing special crops for the landlord, or for rendering certain services. Accordingly, when land is let for the purpose of clearing jungle, or for other reclamation, and on this ground, or on any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement on the ground of its being below the prevailing rate.[2]

No rates at all known.

It must be borne in mind that, in many parts of this Province, settlements by rates are unknown, and only lump areas (frequently unmeasured) are held on lump rentals: clause (*a*) clearly has no application in such cases. See section 31 (*f*) at p. 193, *post*.

It would appear that, where a settlement by rates is not customary in any local area, there is no legal power given to

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[1] *Tekaram Singh* v. *Sandes* [1874], 22 W. R. 335.

[2] *Huro Prosad Roy Chowdhry* v. *Chundee Churn Boyragee* [1883], I. L. R., 9 Cal. 505; *Soora Soondery Dabee* v. *Golam Ali* [1873], 19 W. R. 141 (P. C.).

either landlord or tenant to compel the other to substitute a settlement by rates or by soil classification for a settlement by lump rents, or *vice versâ*. Section 31 (*f*) will not help in such a case, where 'rates' are entirely unknown.

As to rise in prices, *cf.* section 17, para. 3, of Act X. of 1859 and section 18, para. 3, of Bengal Act VIII. of 1869. **Cl. (b): rise in prices.**

Under the old law a *raiyat's* rent was liable to enhancement, on the ground of a rise in the value of the produce.[1] In the present Act the term "price," which is equivalent to money-value, is substituted for "value," which includes other value than money-value.[2] But a far more important alteration is the substitution of "staple food-crops" for "produce." The value of any special crop grown by the *raiyat, e. g.*, jute, sugar-cane, betel-leaf, tobacco, and such like, which requires particular attention, and involves special expenditure, cannot furnish a safe test for judging of the ability of the *raiyat* to pay enhanced rent. Under the former law also special crops were not taken into consideration in settling rents, for the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. The present law has reverted to the policy of the Mahummadan Government, and declared that, in considering the liability of the *raiyat* to enhancement of rent under clause (*b*) of section 30, *ante*, the rise in the average prices of staple food-crops alone should supply the test. It may be observed that, in commuting the tithe into a money-payment in England, staple crops only were taken into account. The Indian Legislature has directed in the present case that the crops should be "staple food-crops." **The old law. The present law: alterations. Staple food-crops to supply the test.**

Section 39, *post*, provides for the preparation of lists of the market-prices of these crops, and thus facilitates the ascertainment of one of the grounds of enhancement mentioned in section 30. Section 39 further gives power to the Local Government, subject to the control of the Governor-General in Council, to **Provisions of section 39.**

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[1] *Horo Prosad Roy* v. *Womatara Debee* [1881], I. L. R., 7 Cal. 263.
[2] Rent Commission's Report, p. 37.

make rules for determining what are to be deemed staple food-crops in any local area. See notes to section 39, *post*.

The old law: meaning of "increase in the value of the produce."

Under the old law it was held[1] that the increase in the value of the produce must be an increase in its natural and usual value in ordinary years; the accidental and exceptional prices of a particular year in consequence of drought and scarcity could not be treated as a measure by which rent is to be adjusted. Again, it was held[2] that the increase must be a permanent one; that is, a steady and normal increase, and not one that fluctuates in a violent and uncertain way, and is effected by extraordinary causes not likely to last.

Clauses (c) and (d): Increase in the productive powers of the land.

Clauses (*c*) and (*d*) deal with increase of the productive powers of the land held by the *raiyat*, independently of his own agency and expense. But both these grounds are subject to the provisions of sections 33 and 34, *post*, which are extremely important.

The old law.

The old law allowed enhancement on the ground of an increase in the productive powers of land "otherwise than by the agency or at the expense of the *raiyat*," and it was held[3] that this meant, not the capacity for realizing a higher rent for building or other purposes, but an increase in the productive powers of the land itself. Where a considerable portion of a town was carried away by the river, and the value of land had consequently increased, it was held[4] that it was not an increase in the productive powers of the land within the meaning of the law. Nor was the increase in the value of land by reason of the existence of a distillery or a ropeyard considered as bringing the case within the scope of the law.[5]

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[1] *Bhagruth Das* v. *Mahsoop Roy* [1866], 6 W. R. (Act X. Rulings) 34.

[2] *Thakurani Dasi* v. *Bisseser Mookerji*, supra.

[3] *Bissessur Chuckervarti* v. *Wooma Churn Roy* [1868], 9 W. R. 122; *Kewajah Chyeman Kajah* v. *Jan Ali Chowdhry* [1864], 1 W. R. 46.

[4] *Khondkar Abdur Rahman* v. *Wooma Churn Roy* [1867], 8 W. R. 330.

[5] *Brojonath Kundu Chowdhry* v. *Stewart* [1871], 16 W. R. 216; *Madan Mohun Biswas* v. *Stalkart* [1872], 17 W. R. 441.

Again, the *onus* of showing that the productive powers of the land had increased independently of the agency of the *raiyat* was on the landlord.[1]

Onus of showing that the productive powers of the land had increased was on the landlord.

Under the present law, no enhancement can be granted under clause (*c*) unless the landlord's improvement has been registered in accordance with the provisions of the Act (section 33, *post*).

No such considerations arise under the present law.

As regards increase of the productive powers owing to "fluvial action," see section 34, *post*.

Fluvial action.

There is no illegality in a suit being brought for enhancement as well as for arrears of rent. The causes of action in respect of the two claims, although separate and distinct, may be combined under rules 3 and 6 of Order No. II. of Act V. of 1908.

Combination of suits for enhancement and arrears.

Again, in a suit for enhancement of rent, the *onus* is on the defendant to show that he is a *raiyat* holding at fixed rates.[2]

Onus.

Under clause xi of section 7 of Act VII. of 1870 (the Court Fees Act), in a suit to enhance the rent of a *raiyat* having a right of occupancy, the amount of the fee payable is computed according to the amount of the rent of the land to which the suit refers payable for the year next before the date of presenting the plaint.

Court-fees.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate,—

Rules as to enhancement on ground of prevailing rate.

(*a*) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree

[1] *Poolin Behary Sen* v. *Watson* [1868], 9 W. R. 190.
[2] *Gudar Tewary* v *Brij Nandan Pershad* [1901], 5 Cal. W. N., p. 880.

an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;

(*b*) if, in the opinion of the Court, the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV. of the Code of Civil Procedure[1] by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392[1] of the said Code;

(*c*) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining the rate; and, whenever it is found that, by local custom, any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;

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[1] These references to Ch XXV. and s. 392 of Act XIV. of 1882 (the old Civil Procedure Code in force at the time the Bengal Tenancy Act was passed, *viz*, 1885) should now be understood to apply respectively to Order XXVI. and to rule 9 thereof of Act V. of 1908 (the new Code now in force).—*See* s. 158 of the last-mentioned Act.

(*e*) if a favourable rate has been determined under clause (*c*) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;

(*f*) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

Cf. Act XII. of 1881 (the United Provinces Rent Act), which has been repealed and re-enacted by U. P. Act II. of 1901. References.

The prevailing rate in Bengal is a historical survival of the old *pargana* rate. The basis on which it rests is practically the axiom that, under the ancient common or customary law of India, the landlord was entitled to enhance the rent of any tenant up to the customary or *pargana* rate for the class of land held by the tenant unless there were special reasons why he should hold at a lower rate. The presumption was, that all land should pay at the customary or usual rate whenever such a rate was found to exist. Principle of the prevailing rate as defined in section 30.

Elaborate inquiries were made, when the Bengal Tenancy Bill was under consideration, with a view to ascertain whether *pargana* rates, or soil-class rates, or uniform rates of any description, prevailed in Bengal districts, with the result that it was found that, except in special tracts, *pargana* or customary or uniform soil-class rates or any sort had ceased to exist.[1]

[1] Sir Steuart Bayley's speech when moving that the Report of the Select Committee be taken into consideration.—Selections, pp. 416 and 417.

The Government of Bengal proposed to abolish the prevailing rate as being "illogical, unnecessary, and mischievous." They said:—

> It is illogical, for it regulates a *raiyat's* liability, not with reference to his own rights, but with reference to rights which it is not his business to maintain. It is unnecessary, for, in the provisions for enhancement on the ground of landlord's improvements, rise in prices, and registered contracts, ample facilities are afforded for increase of rents. It is mischievous; for, if ever there was any probable foundation for it in the survival of *pargana* rates, that foundation no longer exists: while, without any such foundation, the rule places the right of the vast body of cultivators at the mercy of the feeblest, stupidest, and most venal of the class.[1]

The prevailing rate was retained, however, as a ground of enhancement for what it was worth, though it was fully recognized at the time that in only a few cases would any rate be found to prevail so as to satisfy the requirements of the section.

The High Court having, in their rulings regarding prevailing rates under this section, adhered to the interpretation of the term "prevailing rate" adopted under the previous law, it was found, as was indeed anticipated when the Bengal Tenancy Act was passed, that, as a ground of enhancement, the prevailing rate was inoperative in practice.

Principle of the prevailing rate as defined in section 31A.

Sir Charles Elliott therefore propounded an entirely different and a new axiom as the basis of a prevailing rate, namely, "the fact, that a tenant, without sufficient reason, pays a lower rate than his fellows, is a most just cause for enhancement." Section 31A is based on this axiom.

Under section 31A, there is no question of a "historical survival"—"no *pargana* rate in the sense of a rate that is actually prevalent." The prevailing rate, as defined in section 31A, may be a rate that is paid only by a single field, being the rate at

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[1] Bengal Government Letter No. 1906T. R, dated 15th September 1884, for the Government of India, para. 40.—Selections, p. 348.

which and above which the larger portion of the land in the area taken for comparison is held. The area, and not the number or proportion of the tenants who hold at a given rate, is to be looked to in determining the prevailing rate.

To take an extreme case, if the area selected for comparison were 100 *bighas*, and 50 *bighas* were held by a single tenant at Rs. 2-8, and one *bigha* at Rs. 2, per *bigha*, while the remaining 49 *bighas* were held by 40 tenants at Rs. 1-8, still Rs. 2 would be the prevailing rate under section 31A, as the larger portion of the area—51 *bighas*—is held at that or a higher rate.

Section 31, clause (a)—method of determination.

Under clause (*a*) of section 31, the rates for three consecutive years immediately prior to the institution of the suit must be taken into consideration. It must also be shown that there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court; it is not every slight difference that would warrant a decree for enhancement. "Generally paid" means paid by the majority of occupancy-*raiyats*.[1]

Clause (b)—appointment of a Commissioner.

Clause (*b*) empowers the Court, if it considers that the prevailing rate cannot be satisfactorily determined without a local inquiry, to appoint a Revenue-officer as Commissioner for that purpose. The functions of a Commissioner so appointed would be governed by the provisions of Order No. XXVI. of the Code of Civil Procedure (Act V. of 1908). See section 158 thereof.

Under section 392 of the Code,[2] the Local Government has issued the following notification regarding the class of officers from among whom a Commissioner may be appointed:—

In modification of the Government Notification dated the 4th November 1885, the Lieutenant-Governor has been pleased to make, under

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[1] *See* the cases cited under s. 30, *ante*, pp. 182-84 & 186-91.

[2] That is, s. 392 of Act XIV. of 1882, by which should now be understood Rule 9 of Order No. XXVI. of Act V. of 1908, as the former Act has been repealed *in toto*.—*See* s. 158 of the latter.

section 392 of Act XIV. of 1882, the following revised rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act :—

Whenever, under sections 31 (*b*) and 158 (*2*) of the Bengal Tenancy Act, a Court directs that a local inquiry be held under Chapter XXV. of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of a Sub-Deputy Collector, as the Collector of the district may, from time to time, select for the purpose.

The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above to conduct the inquiry, and the commission shall be issued to the person so nominated.[1]

The Board of Revenue has issued the following instructions regarding local inquiries :—

In supersession of the Board's Circular Order No. 3 of July 1891, the following suggestions are circulated with the object of enjoining the necessity of not exceeding the charges allowed by the Court in issuing commissions, under sections 31 (*b*) and 158 (*2*) of the Bengal Tenancy Act, for holding local inquiries :—

1. The person to whom the commission is issued is not, under the rule made by the Local Government by Notification dated the 22nd July 1890, and published at page 756 of Part I. of the *Calcutta Gazette* of the 23rd *idem*, below the rank of a Sub-Deputy Collector, and he is bound, under the Civil Procedure Code, to make the local inquiries himself. The officer so deputed can entertain a reasonable staff of chainmen and *amins* to enable him to perform the work properly.

2. No cost should be incurred to meet the charges of the local inquiry beyond that actually allowed by the Court issuing the commission under Rule 30 (*b*) at page 41 of the High Court's General Rules and Circular Orders as revised in 1891. If the probable costs were calculated with regard to the time likely to be occupied in the execution of the commission, and the Commissioner finds that the time fixed is insufficient, he should give timely notice to the party at whose instance the commission was issued, and report the fact to the Court. Then, unless the sum necessary to cover the expenses for such further period as may be required to complete the execution of the commission is deposited in Court by the party, and the Commissioner certified of such deposit, he should suspend the in-

Rule 30 (*b*) (*4*), page 41 of the High Court's Circulars.

[1] *Calcutta Gazette*, July 1890, Pt. I., p. 756.

vestigation at the close of the period originally fixed, pending the further instructions of the Court.

The expenses of the commission will generally fall under the following heads :—

(1.) Remuneration of the Commissioner.

(2.) His travelling and halting allowances.

(3.) Charges for the temporary subordinate establishment that may be employed.

(4.) Incidental charges that may be unavoidable.

The first will be calculated on the basis of the actual pay which the person to whom the commission is issued has been receiving. The second will be regulated by the scale prescribed for officers of Government of the class to which the Commissioner belongs unless the Court should, for exceptional reasons, order an allowance in excess of the above. The third and the fourth will be passed on the authority of the Revenue-officers concerned, but must on no account assume proportions so as to exceed, in conjunction with the charges under heads (1) and (2), the sum actually allowed by the Court.[1]

Rule 30 (*b*) (5), page 41 of the High Court's Circulars.

Cf. section 20, Act XVIII. of 1873, the North-Western Provinces Rent Act.[2]

Clause (c)—caste rates.

In Bengal and other places, *raiyats* belonging to the higher castes sometimes claim to hold land at special rates of rent; often particular families are, as a matter of fact, allowed to hold at favourable rates. Clause (*c*) declares that, in determining the rate payable by a *raiyat*, his caste should not be taken into consideration unless it is proved that by local custom caste does form

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[1] Board of Revenue Circular No. 4 of August 1894. As to commissions, *see* also the General Rules and Circular Orders of the High Court, 1891, pp. 41 to 45.

[2] Section 20 of Act XVIII. of 1873 runs as follows: "In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration unless it is proved that, by local custom, caste is taken into account in determining such rate: and, whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice." *See* also *Hurro Prosad Roy* v. *Chundee Churn Boiragi* [1883], I. L. R., 9 Cal. 505: S. C., 12 Cal. L. R 251. Act XVIII. of 1873 has been repealed. and section 20 is now replaced by section 37 of U. P. Act II. of 1901, which is in different terms.

an element for consideration. Such local custom must be applicable to a class or, to use the phraseology of the Act, a "description" of *raiyats*. When it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate is to be determined in accordance with that custom.

Clause (d)—landlord's improvement.

In determining the prevailing rate, the amount of any enhancement based on a landlord's improvement should not be taken into consideration. For example, rates may have increased within a certain area in consequence of improvements effected by the landlord; those exceptional rates cannot under the law be regarded as a test of the prevailing rate in the village, or in the neighbouring villages, or be allowed to influence its determination.

Clauses (e) and (f).

Clauses (*e*) and (*f*) were inserted by Bengal Act III. of 1898. The prevailing rate has to be determined by ascertaining the rents paid by the majority of the *raiyats* under the circumstances declared in clause (*a*) of section 30 and clause (*a*) of this section. But it is open to the Court to leave out of consideration any favourable rate that may have been fixed under clause (*c*) for any special class of *raiyats*.

If the rent is not separately allocated to the different classes of land comprised in the holding, the Court has the power, under clause (*f*), of dealing with the area of each class separately, and arriving at the total rent to be paid by the *raiyat*.

What may be taken in certain districts to be the "prevailing rate."

31A.[1] (*1*) In any district or part of a district to which this sub-section is extended by the Local Government by notification in the *Calcutta Gazette*, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (*a*), by an examination of the rates at which lands of a similar description, and with similar advantages, are held within any village or villages,

[1] This section and section 31B were inserted by Bengal Act III. of 1898, section 4.

the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

Illustrations.

(*a*.) The rates at which land of a similar description, and with similar advantages, is held in a village are as follow :—

Bighas		RS.	A.	P.
100	... at	1	0	0
200	... „	1	8	0
150	... „	1	12	0
100	... „	2	0	0
150	... „	2	4	0
Total ... 700				

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(*b*.) The rates at which land of a similar description, and with similar advantages, is held in a village are as follow :—

Bighas		RS.	A.	P.
100	... at	1	0	0
250	... „	1	4	0
150	... „	1	8	0
150	... „	1	12	0
50	... „	2	0	0
Total ... 700				

Then, for the reasons given in Illustration (*a*), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(*2*) The Local Government may, by a like notification, withdraw sub-section (*1*) from any district or part of a district to which it has been extended as aforesaid.

Principle.

As to the principle of this section, *see* notes to section 31, *ante*, page 193, *et. seq.*

Sub-section (*1*) was, by Notification No. 1470 T. R. dated 1st September 1900, published in the *Calcutta Gazette* of the 5th September 1900, Part I., page 970, extended to the district of Tippera; to Orissa by Notification No. 957 T. R. dated November 5, 1898; and, by Notification No. 1091 L. R., dated 18th February 1904, published in the *Calcutta Gazette* of 1904, Part I., page 317, to the Government Estate *Taufir Barhia* in the district of Monghyr. It has not been extended to any other part of Bengal or Behar: so that the definition of a prevailing rate, adopted by the High Court under the old law, still holds good in most of the areas to which this Act applies (*see* notes to section 30, *ante*.

Limit to enhancement of prevailing rate.

31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X, or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground, and to the extent, specified in section 30, clause (*b*), and section 32.

Origin of the section.

This section was inserted by Bengal Act III. of 1898, section 4. It was extended to Orissa in November 1898.

Its effect.

Under this section, when the prevailing rate has once been determined in accordance with the provisions of this Act, it is not liable to enhancement again except on the ground of a rise in prices.

Object of section 31B.

The object of this section is to guard against a perpetual levelling-up of the rates by the repeated application of the rules relating to the prevailing rate. The section applies to a prevailing rate, whether determined by a Civil Court under section 31 or section 31A, or by a Revenue-officer under section 105 (*4*), in respect of an area to which these provisions are applicable. Without this safeguard it is conceivable that all the rates might possibly be levelled up to the maximum by repeated

enhancements on the ground of the prevailing rate as the following illustrations will show:—

Suppose the area selected for comparison to be 70 acres, and—

		RS.	AS.	P.
15 acres to be held	@	2	4	0
10 " "	"	2	0	0
15 " "	"	1	12	0
20 " "	"	1	8	0
10 " "	"	1	0	0
70				

Re. 1-12 is the prevailing rate under section 31A, since the larger portion of the land is held at that rate and higher rates. Suppose all the lower rates to be enhanced to Rs. 1-12, then—

		RS.	AS.	P.
15 acres would be held	@	2	4	0
10 " " "	"	2	0	0
45 " " "	"	1	12	0

If *raiyats* holding 15 acres @ Re. 1-12 were induced to agree to pay @ Rs. 2, then—

		RS.	AS.	P.
15 acres would be held	@	2	4	0
25 " " "	"	2	0	0
30 " " "	"	1	12	0

Rs. 2 would then become the prevailing rate; the lower rate being enhanced up to Rs. 2. Then—

		RS.	AS.	P.
15 acres would be held	@	2	4	0
55 " " "	"	2	0	0

Thus the initial prevailing rate of Re. 1-12 would be levelled up to Rs. 2.

If *raiyats* holding 25 acres @ Rs. 2 were to agree to pay @ Rs. 2-4, then—

		RS.	AS.	P.
40 acres would be held	@	2	4	0
30 " " "	"	2	0	0

Rs. 2-4 would then become the prevailing rate. Thus all the lower rates might be levelled up to the maximum.

Question whether a prevailing rate determined by a Civil Court or Revenue Officer is binding on persons who were not parties to the suit or proceeding.

If, in a suit between *A* and *B*, the Court determines a certain rate to be the prevailing rate, the question has been asked, is that rate binding against *C* and *D* who were not represented in the suit, the answer is in the negative. Under the old law a prevailing rate, determined as between *A* and *B*, did not bind persons who were not represented in the suit; nor does a prevailing rate determined under the present Act bind persons who were not parties to the suit.

Principle.

The intention of section 31B is, that, if, in a suit or proceeding between *A*, a landlord, and *B*, a tenant, a certain rate is determined to be the prevailing rate, and *B's* rent is enhanced up to that rate, it shall not again be liable to enhancement on the ground of the prevailing rate, but it may be enhanced on the ground of a rise in prices as provided by sections 30 (*b*), (*c*), (*d*) and 32.

If a Revenue-officer, in settling rents under section 105 (*4*), were to determine that a certain rate is the prevailing rate, in an area comprising holdings of a number of tenants who were joined as co-plaintiffs or co-defendants, under Rule 85 Chapter VI. of the Government Rules,[1] the rate so determined would be binding on all the tenants so joined unless the Revenue Officer decided otherwise; and, if their rents were enhanced up to the prevailing rate so determined, they could not, at any subsequent time, be again enhanced up to a new prevailing rate deduced from a subsequent re-arrangement of areas held at the different rates in the area selected for comparison. A "prevailing rate," when once determined as between certain parties, cannot be itself enhanced *qua* prevailing rate, as regards those parties, except, on the ground of rise in prices; but the rent of a holding which has been

[1] Printed in Appendix V. to this work, *infra*.

enhanced up to the prevailing rate may be subsequently enhanced on the grounds specified in clauses (*c*) and (*d*) of section 30, as well as on the ground of rise in prices.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices, during the last decennial period, bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if, in the opinion of the Court, it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

Extended to Orissa (Notification No. 2448-L. R. of June 1892).

References.

Cf. section 30, clauses (*b*) and (*c*), *ante*, and section 39, *post*.

Principle.

This section deals with enhancement claimed on the ground of a rise in prices.

Clause (*a*) provides decennial periods for the purposes of comparison, except when it is not practicable to take decennial periods, when clause (*c*) operates. In such cases the Court may, in its discretion, take any shorter periods.[1]

Decisions under Act X. of 1859.

Under Act X. of 1859 it had been held[2] that the old rent must bear to the increased rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to the present value. The rule of proportion thus enunciated was vague and indefinite, while the period of time indicated for purposes of comparison was much too short. Nor did the rule take into account any increase in the cost of production.

The present law.

Section 32, clause (*b*), remedies these defects. First, the Court has ordinarily to take into consideration decennial periods for purposes of comparison; secondly, the rule is applicable to all money-rents; and, thirdly, a deduction of one-third of the excess over the last average is mandatory, to cover probable increase in the cost of production.[3]

Rules as to enhancement on ground of landlord's improvement.

33. (*1*) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement, the Court shall have regard to—

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[1] *See* Report of the Select Committee, para 25 in Selections, p. 385.

[2] *Thakurani Dassee* v. *Bisheshur Mukerjee* [1865], 3 W. R. (Act X. R.) 29: S. C., B. L. R., Sup. Vol (F. B.), 202.

[3] In the case of *Thakurani Dassee, supra*, allowance was made for increased cost of production, so that the power given by clause (*b*) is in accordance wi h the ruling of the High Court in *Showdaminee Dassee* v. *Shookool Mahomed* [1867], 7 W. R. 94.

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilising the improvement, and

(iv) the existing rent, and the ability of the land to bear a higher rent.

(*2*) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Extended to Orissa (June, 1892).

Cf. section 29, *ante*, and sections 76-83, *post*. **References.**

Section 33 deals with claims to enhancement based on the ground of a "landlord's improvements." The section is not happily worded; but it seems to contemplate claims to enhancement based on the ground of any improvement made by, or at the expense of, the landlord. 'Improvement' is defined in section 76, *post*. **Principle.**

Under the old law the landlord was not entitled to obtain enhancement on the ground of improvement unless it was proved that the increased value of the land was due to such improvement.[1] Section 33 lays down definite rules for determining the amount of enhancement in such cases. In the first place, under clause (*a*), sub-section (*1*), the Court shall not grant an enhancement unless the improvement has been registered in accordance with the Act. Apparently there is no bar to the landlord suing for enhancement on the ground of improvement, but no decree can be made unless **The old law—enhancement on the ground of improvement.** **The present law.**

[1] *Hurro Prosad Roy Chowdhry* v. *Wooma Tara Debya* [1865], 2 W. R. (Act X. R.) 12.

the improvement has been duly registered, as provided by section 80, *post*.

In the second place, in determining the amount of enhancement [clause (*b*), sub-section (*1*)], the Court shall have regard to the following matters:—

(i) The increase in the productive powers caused or likely to be caused by the improvement. It will be noticed that the ground is not restricted to increase already caused; the claim may be based also on the *likelihood* of increase. But the likelihood must not be hypothetical; it must be capable of ascertainment with a fair degree of certainty;

(ii) the cost of the improvement;

(iii) the cost incurred by the *raiyat* for the purpose of utilising the improvement; and

(iv) the existing rent and the capacity of the land to bear an increase in its burden.

It is obvious that in some cases the cost of making an improvement is trifling; in others, the *raiyat* may have to incur himself considerable expense in making use of the improvement. Either the one or the other of these circumstances, or both combined, would have an important bearing on the determination of the amount of enhancement. Again, the rent may already be too high; and, in spite of the improvement, the land may not be able to bear an increase in its burden.

Provisions of sub-section (1) controlled by by sub-section (2).

The provisions of sub-section (*1*) are controlled by sub-section (*2*), which entitles the tenant or his "successor in interest" to ask the Court to reconsider its decree, in case enhancement has been awarded, in the event of the improvement ceasing to produce the estimated effect, or, if the effect was of a prospective character, not producing it at all. The right to obtain a review of the decree is

not confined to the original tenant; it also belongs to his successor in interest, who may be either his heir or his assignee in case the holding or tenure is transferable. The ground for review or re-consideration would be that the improvement does not produce or has not produced the effect estimated in decreeing the enhancement.

As to what improvements are compensated for on ejectment, *see* sections 76 to 83, *post*, and as to the registration of improvements, *see* rules 13 to 19, Chap. III., of the Government Rules, in Appendix V. to this work, *post*.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Extended to Orissa (June 1892).

Reference.

Cf. section 18 of Bengal Act VIII. of 1869.

Principle.

This section deals with the claim to enhancement based on the ground of an increase in the productive powers of the land caused by one kind of natural agency alone, *viz.*, "fluvial action."

Principle of the old decisions embodied in clause (a).

Under the old law it was held[1] that a casual increase in the fertility of the soil was not a ground for a permanent en-

[1] *Kristo Mohun Pattur* v. *Hurry Sunkur Mukerjee* [1862], 7 W. R. 235.

hancement of rent and that the increase, in order to be taken into consideration must be either permanent or likely to last for a considerable time.[1] These principles have in effect been embodied in clause (*a*).

Discretion of Court under clause (b).

Clause (*b*) restricts the discretion of the Court by declaring that, although it may enhance the rent to such an amount as it may deem fair and equitable, that amount must in no case give to the landlord more than half of the value of the "net increase" in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Extended to Orissa (June 1892).

Principle.

This section controls the provisions of the previous sections, and gives to the Court the power of refusing any enhancement if it considers the claim to be unfair or inequitable under the circumstances of the case.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

See notes to section 8, *ante*, page 93.

Extended to Orissa (June, 1892).

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[1] *Khaja Abdul Gunney* v. *Bhuttoo Shaik* [1874], 22 W. R. 350.

Limitation of right to bring successive enhancement-suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if, within the fifteen years next preceding its institution, the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if, within the said period of fifteen years, the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid, or on any ground corresponding thereto, or dismissing the suit on the merits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.[1]

Extended to Orissa (June, 1892).

Principle.

If a *raiyat's* rent has already been enhanced, either by contract or by decree of Court, it would obviously be unfair to subject him to harassment for a reasonable period of time. Similarly, if the landlord has attempted to enhance the rent and failed. The Legislature accordingly provides that, where the rent of a *raiyat* has been enhanced by contract made after the 2nd of March 1883,[2] or where the rent has been commuted under the provisions of section 40, *post*, or a decree has been obtained for enhancement on either of the grounds mentioned in clauses (*a*) and (*b*) of section 30, or on any ground corresponding thereto in any enactment repealed by the present Act, no suit for enhancement based on any of those grounds

[1] This reference to s. 373 of Act XIV. of 1882 should now be taken as made to the corresponding provisions embodied in Rule 1 of Order No. XXIII. of Act V. of 1908 (the Code now in force).—*See* s. 158 of the last-mentioned Act.

[2] Leave to introduce the Bill to amend the Rent Law was obtained on this date.

shall be entertained for a period of fifteen years from the date of such contract, commutation, or decree. For the same reason, if the suit, instead of being decreed, was dismissed "on the merits," the *raiyat* will be secure from harassment for a period of fifteen years from such dismissal. But it is otherwise if the suit has been only withdrawn with leave of the Court under the provisions of rule 1, Order XXIII., of the Code of Civil Procedure (Act V. of 1908).

But, in one case[1] the Calcutta High Court has held that the mere fact, that the landlord has obtained a decree for enhancement of rent upon the basis of a contract made before the 2nd of March 1883, would not preclude him from bringing a suit for enhancement under the provisions of section 30, clause (*a*) or (*b*).

Receipt of rent after decree for enhancement.

Under the old Act the mere receipt or acceptance by the landlord of rent at the old rate after a decree for enhancement was considered[2] not to amount to a waiver of his claim to the higher rent decreed to him. The same principle would probably apply under the present law.

Reduction of Rent.

Reduction of rent.

38. (*1*) An occupancy-*raiyat* holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely)—

(*a*) on the ground that the soil of the holding has, without the fault of the *raiyat*, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

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[1] *R. Mitter* v. *Dwarkanath Chuckerbutty*, 28th May 1891 (unreported).
[2] *Lauder* v *Benode Lall Ghose* [1866], 6 W. R. (Act X. Rul) 37.

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(*2*) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Extended to Orissa (June, 1892).

Cf. section 19 of Bengal Act VIII. of 1869. **Reference.**

The provisions of this section are applicable only to occupancy-*raiyats* holding at a money-rent, and are founded on the natural principles of justice. They are in fact corollaries to the right given by the Act to the landlord to claim on certain grounds an enhancement of the rent; the converse grounds give to the *raiyat* a right to seek for a reduction of his burden. **Principle.**

The old law recognized three grounds on which the *raiyat* could obtain a reduction or abatement of his rent, *viz.*— **Grounds for abatement or reduction of rent under the old law.**

(1) diminution of the area, by diluvion or otherwise;[1]

(2) a decrease in the value of the produce, or of the productive powers of the land, arising from causes beyond the power of the *raiyat*;

(3) when the quantity of land held by the *raiyat* had been proved by measurement to be less than the quantity for which rent had previously been paid.

Accordingly a *raiyat* could not sue for abatement of rent simply because the lands which he held were rated higher than those of the same description, and with similar advantages, held by *raiyats* of the same class in the vicinity;[2] nor on the ground of fraud, although he could bring an action for the cancellation of

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[1] See *Shaikh Enayetoolah* v. *Shaik Elahee Buksh* [1864], W. R., Sp. No. (Act X Rul), 42.

[2] *Bubun Mandal* v. *Shib Koomaree Burmonee* [1874], 21 W. R 404.

the entire contract.[1] Similarly a landlord receiving a remission of revenue from Government on account of damage done to his estate by a cyclone was not, on that account, bound to allow a remission to his tenants unless there was an agreement or understanding to that effect.[2]

Grounds for reduction under the present law.

The distinct terms of section 38 of the present Act make it quite clear that a reduction of rent cannot be claimed on these grounds under the present law. That section takes only the second of the grounds specified in section 19 of the old Act, but widens its scope and general effect, and provides another ground for a claim for the reduction of rent, *viz.*, a fall, not due to a temporary and, therefore, passing cause, "in the average local prices of staple food-crops" during the currency of the existing rent.

Deterioration must be of a permanent character.

Under clause (*a*) of section 38, the deterioration must be of a permanent or lasting character. It cannot be said that a "deterioration" is not permanent, only because, by the application of capital and skill it might be removed.[3] A liberal interpretation should be put on the word "permanently," and the word construed with reference to existing conditions.[3]

It does not matter whether the deterioration is by a sudden cause, or has occurred gradually, but it must be without the fault of the *raiyat*. If the deterioration has been occasioned by the laches or act of the *raiyat* himself, he would have no right to relief under this section.

The old law—procedure in claims for abatement.

Under the old law the *raiyat* could claim an abatement of the rent in a suit by the landlord, and could set off against the *zamindar's* claim any sum or sums paid by him in excess of the rent properly payable by him. He could even obtain a refund

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[1] *Shekoor Ali* v. *Umola Ahalya* [1867], 8 W. R. 504; *Darimbya Debbya* v. *Nilmoney Singh Deo* [1879], 5 C. L R. (P. C.) 465.

[2] *Goluk Chunder Mytee* v. *Parbutty Churn Doss* [1871], 15 W. R. 167.

[3] *Gouri Pattra* v. *H. R. Reilly* [1892], I. L. R., 20 Cal. 579.

of sums overpaid.[1] Under the present law, the right to a reduction of the rent can, it seems, be enforced only by suit. The reason of the provision is obvious. In an action for rent brought by the landlord, there are only two issues for determination—(1) what is the amount of rent payable by the *raiyat;* and (2) whether it has been paid. It would be most inconvenient to allow the *raiyat* to raise the question of reduction of rent on the grounds mentioned in section 38, for that would necessarily give rise to totally distinct issues.

The present law—remedy by suit.

As to the right of a tenant to claim reduction on the ground of diminution of area, *see* notes to section 52, sub-section (*1*), clause (*a*), *post.*

Price-lists.

Price lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the list so prepared to the Board of Revenue for approval or revision.

(*3*) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the

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[1] *Barry* v. *Abdul Ali* [1864], W. R., Sp. No. (Act X.), 64; *Baikantho Paraki* v. *Surendro Nath Rai* [1864], 1 W. R. 84; *Savi* v. *Abhai Nath Basu* [1865], 2 W. R. (Act X.) 28; *Dindyal Lal* v *Thakur Kunwar* [1866], 6 W. R. (Act X.) 24; *Nilmani Singh Deo* v. *Annoda Prosad Mukerjee* [1868], 10 W. R. (F. B.) 41; 1 B. L R (F. B.) 97; *Mahtab Chand* v. *Chitro Kumari Debi* [1871], 16 W. R. 201; *Gour Kishor Chandra* v. *Bonomali Chaudhry* [1874], 22 W. R. 117.

local area to which it relates; and, if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(*4*) The price-list shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(*5*) The Local Government shall cause to be compiled, from the periodical lists prepared under this section, lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(*6*) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the list published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, [and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct],[1] unless and until it is proved that they are incorrect

(*7*) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops

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[1] These words in square brackets were inserted by Bengal Act III. of 1898, s. 5.

in any local area, and for the guidance of officers preparing price-lists under this section.

Cf. the Tithe Acts, 1836, 1837, 1839, and 1860 (6 and 7 Will. IV., cap. 71; 7 Will. IV. and 1. Vict., cap. 69; 2 and 3 Vict., cap. 62; and 23 and 24 Vict., cap. 93). References.

The rules made by the Local Government for determining what are to be deemed staple food-crops in all local areas will be found in Chapter II. of, and Schedule II. to, the Rules printed in Appendix V. to this work, *post*. Rules.

The Act, as originally passed, empowered Collectors, if so directed by the Local Government, to prepare price-lists relating to periods antecedent to the passing of the Act, and made it incumbent on them to prepare such lists relative to times subsequent to the passing of the Act. Price-lists prepared for periods subsequent to the passing of the Act were to be presumed to be correct till the contrary was proved, but no presumption of correctness attached to lists prepared for periods before the Act was passed. By the amending Act of 1898, the words, "and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct," were inserted in sub-section (*6*), so that it is now optional with the Courts to presume that lists that may have been prepared for periods before the passing of the Act are correct. List prepared prior to passing of Act

No lists have, however, been prepared for times before the passing of the Act except for certain periods and local areas in Orissa, where they were required for the purposes of the recent settlement of revenue.[1]

Though great weight was attached to the preparation of correct price-lists in the discussions connected with the passing of the Tenancy Act, and though these lists may have very great effect, in the future, in establishing claims to the enhancement or Indifference of landlords and tenants as to price-lists.

[1] Government Notification No 2086 L. R. dated the 27th April 1896, in *Calcutta Gazette*, 1896, Pt. I., p. 521.

reduction of rents, yet neither *zamindars* nor *raiyats* seem to take any interest whatever in the correctness of the lists prepared.

The rules under which the lists are prepared require that drafts of them shall be published for not less than a week at the marts to which they refer, at the Collector's and Sub-divisional Offices, and at every police-station and *munsifi* in the local area to which they relate. Any landlord or tenant is, under sub-section (*3*) of this section, at liberty to present objections to the lists in writing, and such objections have to be submitted to the Board of Revenue with the lists.

There has not been a single objection presented since the Act was passed in 1885; not because the lists are always so correct as not to be open to question, but, it is believed, because neither landholders nor *raiyats* are aware of their importance or sufficiently alive to their own interests to take the trouble to scrutinise them.

Commutation.

Commutation of rent payable in kind.

40. (*1*) Where an occupancy-*raiyat* pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, [or partly in any of those ways and partly in cash,] either the *raiyat* or his landlord may apply to have the rent commuted to a money-rent.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

(*2*) The application may be made to the Collector or Sub-divisional Officer, or to [a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer, for the purpose of making a survey and record-of-rights] under Chapter X., or to any other officer specially authorized in this behalf by the Local Government.

Bengal Act I., 1907; E. B Assam Act I, 1908.

(3) On the receipt of the application, the officer may determine the sum to be paid as money-rent, and may order that the *raiyat* shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-*raiyats* for land of a similar description, and with similar advantages, in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; [and

(*d*) improvements effected by the landlord, or by the occupancy-*raiyat*, in respect of the *raiyat's* holding, and to the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord's improvement.] Ben Act I., 1907; E. B. Assam Act I., 1908.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like

manner as if it were an order made in an ordinary revenue-proceeding.

(*6*) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

Reference. *Cf.* section 178, sub-section (*3*), clause (*g*), *post.*

Principle. The principle of this section is borrowed from ths English Tithe Acts.

Description of the system of rents payable in kind in Behar. The system of paying rent in kind, or on the estimated value of a portion of the crop, prevails chiefly in the southern districts of Behar, but is not confined to those districts. For a description of the system of rents in kind, *see* Appendix IV. to this work, *post.*

Object of section 40. The system of payment of rents in kind was supposed to be economically bad and oppressive, and facilities were therefore afforded by this section for commuting rents payable in kind into money-rents on the application of the landlord or tenant.

Reasons why the section is but little used. Prior to the extension of settlement operations under Chapter X., this section was but little used, partly because its existence was unknown to the landlords and tenants, and partly because, where the system of payment in kind chiefly prevails (*i. e.*, in Gaya, Shahabad, and Patna), village irrigation works (*gilandazi*) have to be maintained, for which the co-operation of all the villagers and the landlord is required.[1] As long as the landlord gets half or a certain proportion of the crop, he is interested in the upkeep of these irrigation works, but, under a money-rent system, his interest in them would, to a great extent, cease. Another reason why the section is so seldom had recourse to is, that, where rents in kind have been commuted, the money-rents fixed under the provisions of the section have been so high that

[1] Board of Revenue's Report on the working of the Bengal Tenancy Act, No. 419A, dated 30th April 1892, para. 21.

the *raiyats*, for whose benefit the section was primarily intended, prefer to continue nominally liable to deliver the stipulated share of the produce, ordinarily half, while in reality they, by various devices, evade the payment of the full stipulated share.

The Board of Revenue have issued the following instructions under this section :— **Board of Revenue's instructions under the section.**

The Board have reason to believe that misconception exists among some officers as to the requirements of the law under section 40 of the Bengal Tenancy Act, and that this has led to the rejection of applications for commutation of rents payable in kind on insufficient grounds, and the consequent discouragement of such applications. They desire, therefore, to point out that, subject to the grounds of his decision being recorded, and to an appeal, the officer dealing with an application under the section has full discretion to seek for such evidence, and make such inquiry as he may deem necessary, in order to determine the money-rent to be fixed. If the tenants are unable to produce receipts showing the quantity of produce previously received by the landlord, or its cash-equivalent—and they will seldom possess such receipts—or the landlords file papers purporting to give previous outturns and divisions of the crops which the tenants repudiate, or which are apparently false, the applications should not necessarily be rejected, but the officer should endeavour to arrive at a fair estimate of the money-rent by recording and duly considering such oral testimony as may be produced by the parties, by reference to other sources of information, such as the cess-papers of the estate, and, if necessary, by local inquiry conducted in person or through some other competent officer.

Again, in determining the amount of the money-rent, the officer must be careful to take into consideration, not one only, but all the matters mentioned in sub-section (*4*), save (*c*) whenever it has no application. A money-rent fixed on the basis of (*a*) only would ordinarily be too low, while one fixed on the basis of (*b*) only would ordinarily be excessive. Apart from any consideration due to (*c*), the officer is required to "have regard" to both (*a*) and (*b*), and to fix a rent which will be fair in comparison with both the average cash-rent of the neighbourhood and the rent in kind hitherto realized for the land. Unless the landlord has undertaken to maintain means of irrigation, in which case (*c*) would apply, it must be borne in mind that, as the rent ceases to vary with the outturn, and becomes fixed, the risk of the seasons falls on the tenant alone, and

the rent should therefore be such as, taking the seasons (good and bad) one with another, he will be capable of meeting, and may therefore be reasonably imposed on him.

Procedure where application for commutation is opposed on ground that rent is not payable in kind.

The Board of Revenue have ordered that, when an application for commutation of rent payable in kind is opposed on the ground that the rent is not in fact payable in kind, it is the duty of the officer to whom the application is made to enquire into the question whether it is payable in kind or not; that, if he finds that it is payable in kind, he is bound to proceed to deal with the application.[1]

If the mere allegation that the rent is not payable in kind were held to bar the jurisdiction of the Revenue Officer in such cases, the section would become practically useless, as such an allegation might be always made; but, where there is a *bonâ-fide* dispute as to whether the rent is payable in kind or not, the Revenue Officer has no power to make an order of appraisement or division of the crop under section 69, nor can he make an order for commutation under section 40.

Application of section where rent is received in money as a matter of indulgence.

Where, by the lease creating a tenancy, it was stipulated that rent should be paid in kind, and there was nothing to show that the covenant had been altered or varied, the mere fact, that the *raiyat* had paid rent in money, which had been accepted by the landlord as a matter of indulgence, or for purposes of convenience, would not debar the latter from demanding payment in kind in conformity with the original contract.[2] The question, whether the payment of rent in money is in consequence of a variation of the original stipulation or merely as a matter of indulgence or convenience, is a pure question of fact, and must depend on the special circumstances of each case.

Appeals under the section.

An appeal lies under sub-section (*5*) against an order determining the amount of money-rent under sub-section (*3*). The

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[1] Board's Letter No. 662A, dated 30th June 1888, to the Government of Bengal.

[2] *Sohobut Ali* v. *Abdool Ali* [1898], 3 C. W. N. 151.

appeal is from the order of a Sub-divisional Officer to the Collector, from the Collector to the Commissioner, and from the Commissioner to the Board of Revenue, as in other revenue-proceedings; or from an Assistant Settlement Officer to the Settlement Officer, and from the Settlement Officer to the Commissioner; and an order passed on appeal under sub-section (*5*) by the Revenue Authorities has been held[1] to be final. The period of limitation for an appeal to the Commissioner from an order of the Collector under this section is 30 days—*see* Schedule III., Article 5, *post*. It has been contended[2] that no 'second appeal' lies, as none is specifically provided for.

No appeal from order under sub-section (6).

The Board of Revenue have declared that there is no appeal to the Revenue Authorities from an order refusing an application under sub-section (*6*). Sub-section (*5*), it was said, clearly and specifically gives a right of appeal against an order of commutation under that sub-section, while sub-section (*6*) does nothing of the kind. If the Legislature had intended to give an appeal in the latter case, there would have been a definite provision with that object.[3] The Commissioner has, however, the same general powers of control in such cases as he has in other matters not distinctly judicial (*see* Chapter I., Rule 2 of the Rules in Appendix V. to this work, *post*).

Procedure.

Sub-section (*1*) declares the class of persons who may apply for commutation, while sub-section (*2*) designates the officer to whom such application should be made. Sub-section (*4*) lays down the rules under which he must proceed in determining [as provided in sub-section (*3*)] the sum to be paid as money-rent. Sub-section (*5*) declares the nature of the order that should be made, and the manner in which it should be made.

Provisions of sub-section (5) imperative.

The Calcutta High Court has held[4] that the provisions of sub-section (*5*) are imperative. The object of requiring that the

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[1] *Saligram Singh* v. *Ramgir* [1897], 3 C. W. N. 311.
[2] *See* Purnea Final Report, p. 85, para. 273.
[3] Board's Memo. No. 706A dated 30th July 1895.
[4] *Chowdhury Raghunath Saran Singh* v. *Dhodha Roy* [1891], I. L. R., 18 Cal. 467.

time from which the order is to take effect should be stated is to enable the parties to know from what date the new arrangement is to come into operation. It ought not to be left in uncertainty; and, in the absence of any date being fixed in the order, the order must be taken to be practically inoperative, or, at any rate, to remain in suspense until it is amended by the specification of the term of its operation.

Costs payable by applicant for commutation.

The Bengal Government has ordered that the duty of making inquiries under this section shall be treated as one of the miscellaneous duties of the Collector, Sub-divisional Officer, or other officer specially authorized to receive applications under the section; that they are to receive travelling allowance in the ordinary way from the Government, and that the applicants shall only pay for the cost of *amins* who may be employed on such inquiries as may be required.[1]

Period for which commuted rents are to remain unaltered.—Bengal Act I., 1907; E. B. Assam Act I, 1908.

[40A. (*1*) Where the rent of a holding has been commuted under section 40, it shall not, except on the ground of a landlord's improvement, or of a subsequent alteration of the area of the holding, be enhanced for fifteen years, nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (*a*) of sub-section (*1*) of section 38.

(*2*) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (*5*) of section 40.]

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[1] Board's Letter 895A, dated 3rd November 1902, to Government; Government Order No. 4125, dated 26th November 1902, to the Board.

CHAPTER VI.

NON-OCCUPANCY RAIYATS.

Application of Chapter.

41. This Chapter shall apply to *raiyats* not having a right of occupancy, who are in this Act referred to as non-occupancy *raiyats*.

Extended to Orissa (September, 1891).

Scope of the Chapter.

This section merely indicates the scope of the Chapter, declaring that it is applicable only to *raiyats who do not possess a right of occupancy*, and who are referred to in the Act as "non-occupancy *raiyats*." But the Chapter is by no means exhaustive, *e.g.*, section 79 deals with the right of non-occupancy *raiyats* to make improvements on their holdings, while other sections deal with other matters affecting non-occupancy *raiyats*. Again, in determining the rights and liabilities of non-occupancy *raiyats*, the question of custom and local usage has to be considered.

Chapter not exhaustive.

Non-occupancy holding ordinarily not heritable.

Ordinarily a non-occupancy holding is not heritable;[1] but, by custom or local usage, it may be transferred (*see* section 183, *post*) or bequeathed: in other words, it may be dealt with either *inter vivos*, or by a testamentary disposition; and nothing in a contract made after the passing of the Act can take away the right of the tenant to transfer or bequeath the holding in accordance with local usage [*see* section 178 (*3*), clause (*d*), *post*].

Rights possessed by a non-occupancy raiyat under custom or local usage cannot be taken away by contract.

Similarly, he can sublet his holding (section 85, *post*), and his right to do so cannot be taken away by any contract made after the passing of the Act [section 178 (*3*), clause (*e*), *post*].

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[1] *Karim Choukidar* v. *Sunder Bewa* [1896], I. L. R., 24 Cal. 207; S. C., 1 C. W. N. 89.

Land excluded from operation of Chapter VI.

Section 116, *post*, excludes certain kinds of land from the purview of Chapter VI. The provisions of the Chapter, therefore, do not apply to the private lands of a proprietor known as *zirat*, *nij-jote*, &c., held "under a lease for a term of years, or under a lease from year to year;" but the qualification, *viz.*, when they are held "for a term of years or from year to year," must be carefully borne in mind. Under section 180 (*2*), *post*, the provisions of Chapter VI. do not apply to lands held under the *utbandi* system. "No doubt it is only an occupancy-*raiyat* who is authorized by the Act to bring a suit under section 38, but the principles laid down in that section ought to be taken into consideration in all proceedings for the settlement of rent, whatever the status of the *raiyat*."[1]

Tenants let into land by tort-feasors.

Tenants let into land by persons having no title therein, if *bonâ-fide* cultivators, and not themselves tort-feasors, acquire a right of remaining on the land subject to payment of rent, and cannot be ousted from their holding except in accordance with the provisions of the Act,[2] unless the land comes within the purview of section 107 of the Transfer of Property Act (Act IV. of 1882).[3] Where certain co-sharer landlords claiming an exclusive title to certain land settled the same with a tenant, in a suit for rent brought by the other proprietors, it was *held*[4] that the tenant could not be treated as a trespasser, and that the plaintiffs were entitled to claim rent from him for use and occupation.

Tenant let into the land by co-sharer landlords.

Tenant encroaching upon the landlord's lands.

But, when a tenant encroaches upon the land of his landlord, he does not, by such encroachment, acquire the status of a tenant in respect of the land encroached upon against the will of the landlord.[5]

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[1] *Gouri Patra* v. *Reilly* [1892], I. L. R., 20 Cal. 586.

[2] *Mohima Chandra Saha* v. *Hasari Pramanik* [1889], I. L. R., 17 Cal. 45; *Binad Lal Pakrashi* v. *Kalu Pramanik* [1893], I. L. R., 20 Cal. 708 (F. B.).

[3] *Lalla Sheo Charn Lal* v. *Lalla Purbhoo Dayal* [1896], 1 C. W. N. 142.

[4] *Asim Sirdar* v. *Ramlall Shaha* [1897], I. L. R., 25 Cal. 324

[5] *Prohlad Teor* v. *Kedar Nath Bose* [1897], I. L. R., 25 Cal. 302.

Initial rent of non-occupancy raiyat.

42. When a non-occupancy *raiyat* is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Extended to Orissa (September, 1891).

References.

Cf. section 8 of Act X. of 1859 and section 8 of Bengal Act VIII. of 1869. As to the words "admitted to occupation," *see* section 47, *post.*

Principle.

This section declares the liability of the *raiyat* to pay rent in accordance with the agreement under which he has been admitted into occupation of the holding. The contract need not be in writing (section 47, *post*), but, if it is in writing, and is for more than a year, the document must be registered. If it is unregistered, the landlord will not be able to put it in evidence, but may prove *aliunde* the initial stipulated rent, or he may recover it under the proviso to section 43.

A non-occupancy *raiyat* holding on after the expiry of the original term of his lease does so on the same rent, and subject to the same conditions and stipulations, until the parties come to a fresh settlement.[1] Compare section 51, *post.*

If no rent has been agreed upon, the landlord is entitled to recover only a fair and equitable rent—*see* section 46, *post.*

Conditions of enhancement of rent.

43 The rent of a non-occupancy *raiyat* shall not be enhanced except by registered agreement, or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less

[1] The same view was expressed under the provisions of s. 8 of Bengal Act VIII. of 1869 and s. 8 of Act X. of 1859, which provide as follows: "*Raiyats* not having rights of occupancy are entitled to *pattas* only at such rates as may be agreed on between them and the persons to whom the rent is payable."

than three years immediately preceding the period for which the rent is claimed.

Extended to Orissa (September, 1891).

Reference.

Section 43 must be read in conjunction with section 46, *post*.

Principle.

Section 43 involves two important principles, *viz.*—(1) that, although there is no express restriction respecting the enhancement of rent paid by a *raiyat* not possessing a right of occupancy, yet, when an enhancement is made, it must be effectuated or, rather, evidenced by a registered agreement, or by an agreement tendered through the Court under the provisions of section 46; (2) but that this should be no bar to the landlord recovering rent from the *raiyat* at the rate at which it has been actually paid for a continuous period of not less than three years preceding the period for which rent is claimed, though such rate may be higher than the rate at which the tenant was inducted upon the land. Section 46 (7), *post*, gives a non-occupancy *raiyat* the right to remain in possession of the holding for five years at the rent agreed to under section 46, even though he may acquire the rights of a settled *raiyat* by so remaining in possession.

Grounds on which non-occupancy raiyat may be ejected.

44. A non-occupancy *raiyat* shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely)—

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and, on breach of which, he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Extended to Orissa (September, 1891).

This section, while declaring the liability of the non-occupancy *raiyat* to ejectment, secures him from ejectment except on certain specific grounds. Properly analysed, it is declaratory of the right of the tenant to hold, subject to certain conditions, the land on which he has been inducted. The first ground of ejectment is his failure "to pay an arrear of rent" [clause (*a*)], although he can be ejected only in execution of a decree (section 89, *post*). But, even after a decree is passed, he may protect himself from being turned out of his holding by paying into Court the amount of the arrears within fifteen days from the date of the decree, or within such other period as the Court may allow for the purpose [section 66, sub-section (*3*), *post*]. Principle.

Clause (*b*) declares the liability of the tenant to be ejected—

(1) when he has used the land in a manner which renders it unfit for the purposes of the tenancy—in other words, for the purposes for which he was inducted upon it. If the land has been let for agricultural or horticultural purposes, to turn it into a brick-field, or to build houses or shops thereon, would render it unfit for cultivation;

(2) when the tenant has broken a condition in his lease which makes him liable to ejectment upon infraction thereof, subject to the reservation that the condition itself is consistent with the general provisions of the Act,

Liability to ejectment confined to the breach of a condition consistent with the Act.

It will be observed that the tenant is not liable to ejectment for the breach of every condition in the contract of tenancy. To subject him to that liability, it must be a condition consistent with the Act, whether made before or after the passing of this Act.

Clause (*b*) of section 44 must be read in conjunction with section 155, sub-section (*1*), *post*, which prescribes the procedure for the institution of a suit for the ejectment of a tenant on the ground that he has broken a condition on breach of which he is, under the terms of his contract with the landlord, liable to ejectment.

Denial of the landlord's title was not a ground for forfeiture.

It will be noticed that, among the grounds enumerated in section 44 which make a non-occupancy *raiyat* liable to ejectment, denial of the landlord's title is not one. According to an earlier case[1] decided under the old law, the disclaimer or denial by the tenant of the landlord's title did not work a forfeiture of the tenancy, but the later decisions[2] expressed a different view, and held that such a denial furnished a ground for ejectment.

Later decisions under the old law.

The present law.

Since the passing of the present Act, in any case to which it applies, there cannot be any eviction on the ground of forfeiture incurred by denying the title of the landlord, that being a ground not enumerated in the Act, and, therefore, expressly excluded by section 178, *post*.[3]

Denial before the present Act came into force.

But, where the denial took place before the Act came into operation, the forfeiture being complete before the passing of the Act, it was held[4] that the case was not to be affected by section 178, and was governed by the old law.

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[1] *Mohammed Basiroollah Bhoonia* v. *Ahmed Ali* [1874], 22 W. R. 448. In this case, MITTER, *J.*, remarked that "it was by no means a settled point of law in this country that the denial by the tenant of the landlord's title works as a forfeiture of the tenancy."

[2] *Dabee Misser* v. *Mungur Meah* [1878], 2 C. L. R. 208; *Sutyabhama Dassee* v. *Krishna Chunder Chatterjee* [1880], I. L. R., 6 Cal. 55: S. C., 6 C. L. R. 375; *Ishan Chandra Chattopadhya* v. *Shama Churn Dutt* [1883], I. L. R., 10 Cal. 41: S. C., 12 C. L. R. 414.

[3] *Debiruddi* v. *Abdur Rahim* [1888], I. L R., 17 Cal. 196; *Chundra Mohun Mookhopadhya* v. *Bissesswar Chatterjee* [1892], 1 C. W. N. 158.

[4] *Debiruddi* v. *Abdur Rahim* [1888], I. L. R., 17 Cal. 196; *Ananda Chandra Mondal* v. *Abrahim Soleman* [1899], 4 C. W. N. 42.

Even in cases governed by the old law, a denial must be explicit, and not in the suit itself, to work a forfeiture. An assertion or denial of a right in a written statement does not give rise to a cause of action, which must be antecedent to any allegation made in the pleadings.[1]

But such denial, to work forfeiture, must be explicit, and not in the suit.

In another case[2] it has been held that, although, in a district where the relations of landlord and tenant were regulated by the provisions of Bengal Act VIII. of 1869, a tenant denying his landlord's title forfeited his tenancy, yet a penal provision of this character could only be enforced upon an express denial; such a denial must not be inferential or proceed upon an *ex-post-facto* circumstance. A denial in the written statement would not operate as a forfeiture. The cause of action must have arisen before the institution of the suit; the real question for determination, therefore, was, whether there was an express denial by the defendant prior to the institution of the suit. If what transpired before suit was ambiguous in its character, it would be irregular and hardly in accordance with the principles of law to refer to the written statement to explain the intention of the defendant.[3] The same principle applies to a denial by an under-*raiyat*.[4]

Where, however, the land is found to belong to the plaintiffs, and the defendants persist in denying their title as well as their right to recover rent, through three successive suits, the position is different.[5] In this case the Court expressed itself thus :—

Persistence in denying landlord's title.

The Subordinate Judge has, however, given effect to the ruling in the case of *Nilmadhab Bose* v. *Ananta Ram Bagdi* (1898), 2 C. W. N. 755, to the effect that "the rule, that a denial of the relation of landlord and tenant does not entail forfeiture, does not apply where the denial is given effect to by a decree of Court." The learned pleader for the appellants contends that the Subordinate Judge should not have followed this ruling, and that the decision in this case is in conflict with that in the case of

[1] *Madan Mohun Shaha* v. *Rajab Ali* [1900], I. L. R., 28 Cal. 223.
[2] *Nisamuddin* v. *Mamtazuddin* [1900], I. L. R., 28 Cal. 135.
[3] As to occupancy-*raiyats*, *see* notes to s 25, *ante*, pp. 161-67.
[4] *See* note to s. 49, *post*; *Dhora Kairi* v. *Ramjeevan Kairi* [1890], I. L. R., 20 Cal. 101, 103.
[5] *Fais Dhali* v. *Aftabuddin Sirdar* [1902], 6 C. W. N. 575. See also *Nilmadhab Bose* v, *Ananta Ram Bagdi* [1898] 2 C. W. N. 755.

Dhora Kairi v. *Ramjeevan Kairi* (1890), I. L. R., 20 Cal. 101, and he invites us to refer the matter to a Full Bench. We, however, think that there is no conflict between the two cases, and that the Subordinate Judge has rightly followed the more recent ruling. It has been found, as a matter of fact, that, in the previous suit between the parties, the defendants were not tenants of the plaintiffs; and the parties in this suit, that is to say, both the plaintiffs and the defendants, plead that the defendants are not tenants of the plaintiffs.

That being so, it seems to us that the Munsif should not have found in favour of the defendants a fact which they themselves, in their pleadings, deny. Furthermore we think that the defendants are now estopped by a matter of record from pleading that they are the plaintiffs' tenants; and, that being so, the plaintiffs are quite entitled to turn them out, and take *khas* possession of the land. The appeal is dismissed with costs.

Transfer by the raiyat of his holding, in whole or in part, no ground for forfeiture.

A transfer by the *raiyat* of the whole or part of a holding does not cause forfeiture of the tenancy, or entitle the landlord to eject the *raiyat*, so long as he does not disclaim his interest in the holding, and continues to pay the rent for it.[1] Nor does the transfer by an occupancy-*raiyat* of a part of his holding give any right to the landlord to recover by ejecting the transferee, in the absence of evidence to show that, by custom, such transfer is allowed so as to sever the holding into two parts.[2] But, when a tenant transfers his non-transferable holding, abandons possession, and ceases to pay rent for it,[3] or when he transfers the holding, and accepts a new tenancy from the transferee, ceasing himself to pay rent for the transferred holding, the landlord is entitled to eject the transferee.[4] *Quære.*—Whether a landlord may eject a tenant who has transferred a part of his holding, remaining in possession of the other part. In one case[5] it has been held he cannot. But some doubt was thrown on the correctness of this view in another

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[1] *Kabil Sardar* v. *Chandra Nath Nag Chowdhri* [1892], I. L. R., 20 Cal. 500; *Bansi Das* v. *Jagdip Narain Chowdhuri* [1896], I. L. R., 24 Cal. 152; *Shaikh Gosaffur Hossain* v. *Dabbish* [1896], 1 C. W. N. 162; *Chundra Mohun Mookhopadhya* v. *Bissesswar Chatterjee* [1892], 1. C. W. N 158.

[2] *Durga Prosad Sen* v. *Doula Ghasee* [1894], 1 C. W N. 160.

[3] *Robert Wilson* v. *Radha Dulari Koer* [1897], 2 C. W. N. 63.

[4] *Kali Nath Chakravarti* v. *Upendra Chandra Chowdhuri* [1896], I. L. R., 24 Cal. 212: S. C., 1 C. W. N. 163. *See* also *Narendra Narain Roy Chowdhury* v. *Ishan Chunder Sen* [1874], 13 B. L. R. 274: S. C., 22 W. R. 22.

[5] *Pandab Nath* v. *Durga Churn Roy* [1893], 2 C. W. N. clv. (note).

case,[1] and the question, whether the transfer of a portion of the holding worked a forfeiture, so far as that portion was concerned, was referred to a Full Bench. The Full Bench, however, finding that there was no evidence on the record to prove that the tenant had refused to pay rent for the portion sold by him, did not consider[1] it necessary to answer the question referred.

Ameliorating waste no cause for forfeiture.

Nor would the commission of an act of what is called "ameliorating waste"[2] give to the landlord the right of ejecting the tenant. Where a tenant has taken the lease of an old silted-up tank from a co-sharer landlord, and re-excavated it without the consent of the other landlords, they would have no right of ejectment. They would only be entitled to their share of the rent.[3]

Ejectment on expiration of lease.

Clause (*c*) provides for the ejectment of a *raiyat* admitted to occupation under a *registered* lease on the ground that the period for which the tenancy was created has expired. This clause, however, does not extend to the case of a *raiyat* who holds otherwise than under a *registered* lease. Formerly the service of a notice to quit under section 45, *post*, "not less than six months before the expiration of the term," was necessary before a suit for ejectment could be filed. But, as that section has now been repealed, no notice is necessary.

Tenants admitted into occupation under verbal agreements or unregistered leases.

As the section does not provide for any rule of eviction in the case of tenants admitted into occupation under verbal agreements or *unregistered* leases, it would appear that the Legislature did not intend they should be ejected from their holdings on the expiration of the original term of their tenancy. The governing idea seems to be, that, when a *raiyat* is let into occupation of land for a fixed period, it should be under a registered lease to avoid all question relating to the term of the tenancy. In cases of tenancies created verbally, or by an unregistered document,

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[1] *Maharaja Kissen Pertab Sah Bahadoor* v. *Tripe* [1895], 2 C. W. N. clv.
[2] For the meaning of the expression, *see* notes to s. 76, *post*.
[3] *Madan Mohan Shaha* v. *Rajab Ali* [1900], I. L. R., 28 Cal. 223.

it should be presumed that they are for indefinite terms. And accordingly, in such cases, the *raiyat* cannot be ejected from his holding so long as he does not contravene the other provisions of the law.

Tenants holding over after the expiration of their leases.

When an agricultural tenant holds over after the expiration of his lease, his tenancy is renewed from year to year. And the tenant continues upon his holding on the same stipulations as in the original lease, subject to the condition that they are consistent with the Act.[1] "It was not an ordinary incident that interest on arrears should be payable at the very high rate claimed. On the contrary, there was no such incident, and, if the landlord had put the holding up to sale subject to an express condition that the higher rate should be paid, the condition would not bind the purchaser, in so far as it purported to create a new contract between himself and the landlord."[2] A stipulation for the payment of interest at an unusual and exorbitant rate cannot be supposed to be an incident of tenancy which would attach to it even after a sale for arrears of rent.[3]

Interest at a high rate not an ordinary incident of tenancy.

Tenancy created before the Act.

In a tenancy created before the passing of Act VIII. of 1885, it was provided that the *raiyat* should pay interest on all arrears at the rate of 75 per cent. per annum. In a suit,[1] brought after the Act came into force, for arrears of rent and interest at the specified rate, it was held that, under the provisions of the Bengal Tenancy Act, the landlord could not recover interest at a rate higher than 12 per cent. per annum.

Under the old law, a tenant holding over was bound by all the conditions of his expired lease.[4]

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[1] *Administrator-General of Bengal* v. *Asraf Ali* [1900], I. L. R., 28 Cal. 227. See also section 51, *post*.

[2] *Alim* v. *Satis Chundra Chaturdhurin* [1896], I. L. R., 24 Cal. 37.

[3] *Kali Nath Sen* v. *Troilokhya Nath Roy* [1899], I. L. R., 26 Cal. 315.

[4] *Shaik Enayetullah* v. *Shaik Elahi Bukhsh* [1864], W. R. (Sp. No), Act X. Rulings, p. 42; *Tara Chunder Banerji* v. *Amir Mundul* [1874], 22 W. R. 394; *Srimutty Altab Bibi* v. *Jugul Mundul* [1876], 25 W. R. 234.

Clause (*d*) must be read with section 46, sub-sections (*7*) and (*8*), *post*. Under sub-section (*8*), in a suit for ejectment based on the grounds set forth in section 46, the Court must pass a decree for ejectment if the tenant refuses to pay what it has determined to be a fair and equitable rent for the holding. If, however, he agrees to pay the rent so determined, he will be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement,[1] but is liable to ejectment on the expiration of that period, subject to the conditions prescribed in section 45, unless he acquires in the meantime a right of occupancy or the status of a settled *raiyat*. Clause (*d*), therefore, only formulates in a general form the provisions of sub-sections (*7*) and (*8*) of section 46.

Suit for ejectment based on grounds set forth in section 46.

In a case[2] arising in a district where Act X. of 1859 was in force, it was found that the tenant-defendant had been in occupation of the land since 1876, and had consequently acquired rights of occupancy. One of the conditions of his lease was, that in the beginning of the Bengali year 1286, he was to take an *Amin* from the landlord's *serishta*, and get the measurement and *jamabandi* of the *naiabadi* lands made; and, in case he did not pray for an *Amin* in 1286, he was to forfeit his right in the *naiabadi* (newly-cultivated) land, and the land was to go back to the landlord's *khas* possession. The defendant having failed to act in conformity with the above covenant in his lease, upon a suit by the landlord, it was *held* by the High Court that, under clause (*5*) of section 23 of Act X. of 1859, the defendant was liable to ejectment and cancellation of his contract; but, in order to obtain that relief, the plaintiff was bound to show that he had served the defendant with a sufficient notice to quit before the institution of the suit; and that the institution of a suit was not such notice.

Right to naiabadi land under the provisions of Act X of 1859 where there was a condition as to measurement.

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[1] *See* notes to s. 46, *post*, p. 236.

[2] *Nobin Manjhi* v. *Raj Kumar Gouri Lall Singh Deo* [1900], 6 C. W. N. 199.

Limitation.

The period of limitation, for a suit for ejectment on the ground that the defendant *raiyat* has used the land in a manner which unfits it for the purposes of the tenancy, is two years [Art. 32, Schedule I. to the new Limitation Act (No. IX. of 1908)]. The period for a suit on the ground that the tenant has broken a condition on breach of which he is, under the terms of the contract between his landlord and himself, liable to be ejected, is one year (Art. 1, Schedule III. to the present Act).

A *raiyat* who has been dispossessed can sue to recover possession within two years from the date of dispossession (Art. 3, Schedule III., as modified by Bengal Act I., 1907, and E. B. Assam Act I., 1908).

Conditions of ejectment on ground of expiration of lease.

[45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy *raiyat* unless notice to quit has been served on the *raiyat* not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term]

Extended to Orissa (September, 1891).

Repealed by Bengal Act I., 1907, and by E. B Assam Act I, 1908.

This section has been repealed, and a period of limitation for such ejectment-suits prescribed in Schedule III. [Art. 1 (*a*)] of this Act as amended. No notice is now necessary.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy *raiyat* unless the landlord has tendered to the *raiyat* an agreement to pay the enhanced rent, and the *raiyat* has, within three months before the institution of the suit, refused to execute the agreement.

(*2*) A landlord desiring to tender an agreement to a *raiyat* under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the

prescribed manner; and, when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(*3*) If a *raiyat*, on whom an agreement has been served under sub-section (*2*), executes it, and, within one month from the date of service, files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a *raiyat* under sub-section (*3*), the Court or officer, in whose office it is so filed, shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the *raiyat* does not execute the agreement and file it under sub-section (*3*), he shall be deemed, for the purposes of this section, to have refused to execute it.

(*6*) If a *raiyat* refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the *raiyat* agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but, on the expiration of that term, shall be liable to ejectment under the conditions mentioned in the last-foregoing section unless he has acquired a right of occupancy.

(*8*) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description, and with like advantages, in the same village.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Extended to Orissa (September, 1891).

Principle.

Section 46 contains provisions relating to ejectment on the ground of the refusal by a *raiyat* to agree to enhancement. Sub-section (*1*) lays down a general rule that no suit for ejectment on such ground shall be instituted unless an agreement has been previously tendered to the *raiyat*, and he has refused to execute the same.

Modes in which the agreement should be tendered.

Sub-section (*2*) provides for the mode in which the agreement should be tendered. From the use of the word "may," it might at first be imagined that the law contemplates modes of tender other than those specified in the sub-section: in other words, that it does not debar the landlord from tendering the agreement through a solicitor or *vakil*. But a closer examination of the sub-section will show that the word "may" refers to the two modes specified in it, and not to any other mode. The landlord may file the agreement, either in the office of the Court, or in the office of the officer appointed "in this behalf" by the Local Government. If he adopts any other method, he cannot claim the benefit of the procedure or the remedy provided by the following sub-sections.[1]

Sub-section (3) merely declaratory.

Sub-section (*3*) is merely declaratory. It states that, when an agreement served as aforesaid upon a *raiyat* is executed and

[1] For rules framed by the Local Government for service of the agreement on the *raiyat* under sub section (*2*), and for service of notice under sub-section (*4*) on the landlord, *see* Government Rules 30 and 31, Chapter V., in Appendix V. to this work, *post*.

filed by him, it shall take effect from the commencement of the agricultural year next following.

Sub-section (*4*) is a corollary to the previous sub-section. It provides that the Court or officer shall "forthwith" cause a notice, to be served on the landlord in the prescribed manner, of the fact that the agreement has been executed and filed by the *raiyat*.[1] Sub section (4).

If the agreement is not executed and filed under the provisions of sub-section (*3*), the *raiyat* will be presumed to have refused to execute it. Sub-section (5).

Sub-section (*6*), coupled with sub-section (*9*), provides a uniform basis for the enhancement of the rent of non-occupancy *raiyats*, which was entirely wanting under the former law. In the absence of a governing principle, there was no uniformity in the decisions of the Courts; in some instances[2] it was held that the landlord was entitled to impose what terms he liked on the *raiyat*; in others[3] a moderate view was expressed in conformity with the principle embodied in the present Act. Sub-sections (*6*) and (*9*) are based on the principle which was enunciated in the great Rent Case,[4] but are by no means exhaustive. They only prescribe that, if there be lands of a similar description and with similar advantages in the same village, "the Court shall have regard to the rents generally paid by *raiyats*" for them, but it was not intended that, if there be no such lands, it should be impossible to enhance the rent of non-occupancy *raiyats*.[5] In the

Sub-section (6). The old law. Sub-sections (6) and (9) are not exhaustive.

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[1] For rules framed by the Local Government for service of the agreement on the *raiyat* under sub-section (*2*), and for service of notice under sub-section (*4*) on the landlord, *see* Government Rules 30 and 31, Chapter V, in Appendix V. to this work, *post*.

[2] *Kubir Sirdar* v. *Goluk Chunder Chuckerbutty* [1865], 3 W. R. (Act X.) 126; *Maniruddi Mirdha* v. *Kennie* [1865], 4 W. R. (Act X.) 45; *Gopal Lal Thakur* v. *Buddruddin* [1867], 7 W. R. 28; *Janoo Mandar* v. *Brijo Singh* [1874], 22 W R 548.

[3] In other cases, it was held that a non-occupancy *raiyat* was bound to pay only a fair and equitable rent—*Stalkart* v. *Bharat Lall* [1864], W. R., Sp. No. (Act X.) 115; *Jean Lal Jha* v. *Kalinath Jha* [1866] 5 W. R. (Act X) 41; *Pitambar Karmokar* v. *Ram Tarn Rai* [1868], 10 W. R. 123; *Bakranath Mandal* v. *Binodram Sen* [1868], 1 B. L. R. (F. B) 25: 10 W. R. (F. B.) 33; *Ram Mohun Ghosh* v. *Modhu Sudan Chowdhury* [1869], 11 W. R. 304.

[4] *Thakurani Dasi* v. *Bireshar Mukerji* [1865], B. L. R., F. B. Vol., 202.

[5] *Nawab Sir Syed Hossain Ali Khan* v. *Hati Charan Shaw* [1900], I. L. R., 27 Cal. 476: S. C., 4 C. W. N. 321.

absence of such materials, other evidence may be adduced for the purpose of determining what rent is fair and equitable. The Act, however, affords no guide or principle for determining what is a fair and equitable rent of a non-occupancy holding other than that laid down in sub-section (*9*) of this section.

Sub-section (7).

Sub-section (*7*) prescribes the period for which the rent so determined will remain in force; on the expiration of the period of five years provided thereunder, the *raiyat* is liable to ejectment under the conditions mentioned in section 45 unless, in the meantime, he has acquired a right of occupancy.

Sub-sections (8 and (10).

Sub-sections (*8*) and (*10*) go together. If the *raiyat* does not agree to pay the rent determined by the Court, the Court must pass a decree for ejectment, which will take effect only from the end of the agricultural year in which it is passed.

Explanation of "admitted to occupation."

47. Where a *raiyat* has been in occupation of land, and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

Extended to Orissa (September, 1891).

Principle.

The explanation contained in this section is most important and far-reaching in its character. It provides that, when a lease is executed in favour of a *raiyat* who is already in occupation of land, "with a view to a continuance of his occupation," his tenancy should not be deemed, for the purposes of Chapter VI., to begin with the lease although the lease itself "may purport to admit him to occupation." This provision was inserted in consequence of frequent attempts on the part of landlords to evade the provisions of the law by giving to *raiyats* already in occupation of lands leases purporting to begin their tenancy with the lease. Under this explanation of the words "admitted to occupation," a *raiyat's* tenancy would date back to the time when he was first let into

possession, and he would not be liable to ejectment under the provisions of clause (*c*) of section 44.[1]

As a matter of practice, tenants very often enter on possession of lands long before there is any question of embodying the terms and conditions of their tenancy in a lease.

Are these rights heritable?

Section 26, *ante*, makes the rights of an occupancy-*raiyat* heritable. No express provision makes those of a non-occupancy *raiyat* heritable, but they may be bequeathed in accordance with local usage [section 178 (*3*) (*a*), *post*], and no contract made subsequent to the passing of this Act can restrict that right. The question was exhaustively discussed by a Full Bench recently, and it was *held*[2] that the right of a non-occupancy *raiyat* has not been expressly made heritable by the Bengal Tenancy Act; but, if such right were heritable at the time of the passing of that Act, it has not been taken away by it.

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[1] The case reported in 9 C. W. N. cclxxxvii (*Kamini Persad* v. *Khudadad Khan*) may be referred to.

[2] *Lakhan Narain Das* v. *Jainath Pandey* [1907], I. L. R., 34 Cal. 516 [*Karim Chowkidar* v. *Sundar Bewa* (1896), I. L. R., 24 Cal. 207, and *Arip Mandal* v. *Ramratan Mandal* (1904), I. L. R., 31 Cal. 757, referred to].

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-*raiyat* holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely)— **Limit of rent recoverable from under-raiyats.**

(*a*) when the rent payable by the under-*raiyat* is payable under a registered lease or agreement—fifty per cent.; and,

(*b*) in any other case—twenty-five per cent.

Extended to Orissa (September, 1891).

Principle.

Section 48 limits the right of a "landlord of an under-*raiyat* holding at a money-rent," in other words, of a *raiyat* who has under-let the whole or part of his holding, to recover from his under-tenant rent exceeding the rent which he himself pays by more than the specified percentage.

"Lawfully payable" and "lawfully recoverable."

The distinction which has been attempted to be drawn between "lawfully payable" and "lawfully recoverable" proceeds, it is suggested, on some slight misconception. No such expressions are used in the section itself, and for the evident reason that the legal obligation on one person to pay a lawful demand or claim carries with it the correlative right in another to recover the same; if the right is incapable of enforcement, the obligation is meaningless. Accordingly what is "lawfully payable" must *ex necessitate rei* be "lawfully reccoverable."

Raiyat debarred from recovering from his under-raiyat rent beyond the provisions of section 48.

An under-*raiyat* may enter into an agreement to pay a rent double the rent paid by his landlord, but, as the landlord cannot recover beyond the limit imposed by section 48, it is unreasonable to say that the amount agreed to by him is lawfully payable.

The Calcutta High Court has held[1] that, where an under-*raiyat* holds under a registered lease executed before the Bengal Tenancy Act came into force, the provisions of section 48, clause (*a*), operated as a bar to the *raiyat* recovering from his under-*raiyat* rent more than 50 per cent. in excess of the rent payable by him to his own landlord.

Section general in its terms, and applies to holdings created before or after the Act.

But the bar is not restricted to registered leases. The section is general in its terms, and applies to all under-*raiyats*, whether their holdings were created before or after the passing of the Act, and whether they hold under a registered lease or otherwise, the only limitation in the two cases being in the percentage recoverable. When the under-*raiyat* pays in kind, the section is not applicable.

The section is largely inoperative, as most under-*raiyats* take only a very small part of a *raiyati* holding on a sub-lease and there is no authority given by this section to a Court to distribute the rent paid by the *raiyat* over the various parts of the holding.

It operates in practice in these three cases only—

(*a*) when the *raiyat* holds at a 'rate' of rent, not at a lump rental;

(*b*) when the *raiyat* lets out the whole of one holding to the under-*raiyat*;

(*c*) when the *raiyat* lets out only *part* of his holding at a rent higher than he could lawfully recover under this section if he let out the *whole* holding to the under-*raiyat*.

Restriction on ejectment of under-raiyats.

49. An under-*raiyat* shall not be liable to be ejected by his landlord except—

(*a*) on the expiration of the term of a written lease;

[1] *Ram Kumar Jugi* v. *Jafar Ali* [1898], I. L. R., 26 Cal. 199 (note); *Guru Das Shut* v. *Nand Kishore Pal* [1898], I. L. R., 26 Cal 199; *Babaluddin Mohamed* v. *Dwarka Nath Singha* [1900]. I. L. R., 28 Cal. 166; S. A. 508 of 1897, decided 14th July 1898; S. A. 911 of 1897, decided 29th July 1897.

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

Extended to Orissa (September, 1891).

Cf. sections 66, 85, 89, 155, and 156, *post.* **References.**

This section gives a statutory guarantee to the tenancy of an under-*raiyat.* **Principle.**

Under the old law, an occupancy-*raiyat* could sub-let his land without incurring forfeiture on that account.[1] But he could not, by sub-letting, alter the character of his holding.[2] But a non-occupancy *raiyat* had no such right. Under the present law, all classes of *raiyats* appear to possess the right of sub-letting subject to the conditions of section 85, *post.* In the case of a non-occupancy *raiyat,* a landlord may protect himself against sub-letting, under the provisions of clause (*b*) of section 44, by a special covenant in the lease. **The old law relating to sub-letting.** **The present law.**

Clause (*a*) of the present section declares that an under-*raiyat* holding under a written lease shall not be liable to be ejected except on the expiration of the term of that lease. But this does not affect the right of the landlord (the *raiyat*) to institute a suit under section 66 on the under-*raiyat's* default in payment of the rent. **Ejectment of an under-raiyat holding a lease.** **Suit may be brought under section 66.**

Clause (*b*).—Where the under-*raiyat* is "holding otherwise than under a written lease," he can be ejected only "at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord." **Under-raiyat not holding under a lease.**

An occupancy-*raiyat* sublet his holding, not by a registered instrument, nor with the consent of the landlord. The landlord **Notice always necessary.**

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[1] *Kalee Kishore Chatterji* v. *Ram Churn Shah* [1868], 9 W. R. 344; *Haran Chunder Paul* v. *Mookta Sundari* [1868], 10 W. R. 113; *Jumeer Gasee* v. *Goneye Mundul* [1869], 12 W. R. 110.

[2] *Karoo Lall Thakoor* v. *Luchmeeput Doogur* [1867], 7 W. R. 15; *Hureehur Mookerjee* v. *Judu Nath Ghose* [1867], 7 W. R. 114.

purchased by a private sale the occupancy-right which thereupon merged in the landlord's interest (section 22, *ante*, page 141). It was *held*[1] (a previous case being distinguished) that, the sale being a private sale, the landlord did not acquire the occupancy-holding free of incumbrances, and that so he was not entitled to bring a suit for recovery of possession against the under-*raiyat* without first serving on him a notice to quit in spite of the provisions of section 85 (*1*) of this Act, *post*.

Ejectment from homestead lands.

Where a *raiyat* lets out homestead lands to an under-*raiyat*, the latter is an "under-*raiyat*" within the meaning of the Bengal Tenancy Act, 1885, notwithstanding that the purpose of his tenancy is neither agricultural nor horticultural; and, in order to maintain a suit in ejectment, a notice under section 49, clause (*b*), of the Act, must be served upon the under-*raiyat*.[2]

Denial of landlord's title.

Notice to quit.

An under-*raiyat* does not incur a forfeiture of his tenancy by denying his landlord's title, nor can he be evicted from his holding except after a notice to quit as prescribed by clause (*b*) of the present section.[3]

Holding over.

An under-*raiyat* who has been let into land under a *kabuliyat*, but has been allowed to hold on for a number of years after the expiry of the period mentioned in the lease, comes within the provisions of section 49, clause (*b*), and cannot be ejected without the service on him of a notice to quit; and the bringing of a suit for ejectment against him cannot be regarded as a sufficient notice.[4]

Suit not a sufficient notice.

A suit brought before the expiry of the Bengali year in respect of which rent is claimed.

A suit for ejectment cannot be brought until after the liability to ejectment has arisen.[5] But, if a suit is brought before the expiry of the Bengali year in respect of the arrears

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[1] *Amirullah Mahomed* v. *Nasir Mahomed* [1905], I. L. R., 34 Cal. 104 (*Peary Mohun* v. *Badal Chandra* [1900], I. L. R., 28 Cal. 205, distinguished).

[2] *Ram Roy* v. *Mohendra Nath Samanto* [1903], 8 C. W. N. 454.

[3] *Dhora Kairi* v. *Ram Jewan Kairi Mahton* [1890], I. L. R., 20 Cal. 101; *see* also *Kapali* v. *Jaki Karikar* [1902], 6 C. W. N. 377.

[4] *Rabiram Das* v. *Uma Kant Chuckerbutty* [1898], 2 C. W. N. 238.

[5] Unreported case, S. A. No. 1436 of 1895, decided Dec. 2, 1896.

of rent for that year, the *raiyat*-landlord is not entitled to eject the under-*raiyat* tenant under the provisions of section 66.[1]

What is a sufficient notice.

Regarding the question of the sufficiency of a notice to quit, the Calcutta High Court has held[2] that the section does not prescribe any period of notice, or that the suit shall not be brought until the expiry of a certain time after expiry of the period of notice:—

The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year, but that he shall not eject the *raiyat* until the end of the agricultural year next following the year in which the notice to quit is served, that is to say, the under-*raiyat* must, under any circumstances, get a full year, expiring at the end of the agricultural year, from the time when the notice is served. The Legislature advisedly seems to have refrained from fixing any period of notice, and the section was probably framed as it is framed, with the view of doing away with all questions of the reasonableness or otherwise of the notice, it being considered sufficient to intimate the landlord's intention of determining the tenancy, and leaving the law to operate so that the *raiyat*, if he chooses to remain on the land, shall not be ejected until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so does not, we think, vitiate the notice.

A notice to quit without specifying any period would be open to the same objection on the ground that it was a notice to quit at once. In another case[3] it has been held that it is not necessary to specify, in a notice under clause (*b*) of section 49, the precise time at which the defendants would be liable to ejectment. But this probably would be the case if the under-*raiyats* are not prejudiced thereby.

The service.

The mode of service of notices under this Act is prescribed in the rules framed by Government.[4] Those rules state that,

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[1] *Guru Das Shut* v. *Nand Kishor Pal* [1898], I. L. R., 26 Cal. 199.
[2] *Naharullah Patwari* v. *Madon Gasi* [1896], 1 C. W. N. 133.
[3] *Dwarkanath Santra* v. *Rani Dassi* [1900], I. L. R., 28 Cal. 308.
[4] Rule 3, Chap. I., of the Rules framed by the Government of Bengal under s. 189 of the Bengal Tenancy Act.—*See* Appendix V. to this work, *post*.

when no special form of service is directed in the Act, service must be effected by the Court in the manner provided in the Code of Civil Procedure for the service of summonses.[1] A notice, therefore, sent by post in a registered cover, and proved to have been delivered to the defendant, is not sufficient in law.[2] There is no rule, however, requiring that the notice should be served through the Court: what is really required is, that it should be served in the same manner as is provided in the Code of Civil Procedure; and, if that is done, the requirements of the law are complied with.[3] An objection to the notice, that it should have been made by proclamation and beat of drum, raised for the first time in second appeal, cannot be entertained.[3]

A notice sent by registered post and delivered is not sufficient.

What is sufficient notice.

Trifling error.

But a trifling error, which was never objected to by the defendant on the ground that he was misled by the defect, would not vitiate the notice.[3]

Service on one defendant.

In a case[4] where four under-*raiyats* were sued under the provisions of section 49, upon their contention that they had not been served with a notice to quit as required by clause (*b*), it appeared that personal service had been effected on only one of them, and it was held that Rule 3 of Chapter I. of the Rules made by the Bengal Government dated the 21st December 1885 had not been complied with, and that, consequently, the notice was bad in law, and that the whole suit must fail. But it does not appear to have been brought to the notice of the learned Judges in this case that Rule 3 had been modified by the Government Notification dated the 8th January 1900.[5] Rule 3 of the new Rules (Notification No. 2705 T. R. of 31st October 1907) now reprinted in Appendix V., *post*, is substantially the same.

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[1] *Taradas Malakar* v. *Ramdoyal Malakar* [1897], 2 C. W. N. 125.

[2] *Taradas Malakar* v. *Ramdoyal Malakar* [1897], 2 C. W. N. 125; *Lala Makhan Lall* v. *Lala Kaldip Narain* [1900], I. L. R., 27 Cal. 774.

[3] *Lokenath Ghose* v. *Petambar Ghose* [1898], 3 C. W. N 215.

[4] *Tamasha Bibi* v. *Mathura Nath Bhoomick* [1901], 6 C. W. N. 67.

[5] Published in the *Calcutta Gazette*, 1900, Pt. I., p. 20: "In exercise of the powers conferred by section 189 and sub-section (*6*) of section 190 of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-Governor is pleased to make the following rule under the said Act, as amended by the Bengal

The provision, that personal service should be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, is imperative only in a case where the notice is addressed to one or more persons occupying or owning the same holding or tenure. An alternative method is provided for other cases.

Although the decision itself makes no reference to the mode in which a notice in such a case should be served, evidently the learned Judges gave effect to the contention of the appellants (the under-*raiyats*) that the service should have been effected by proclamation and beat of drum.

Notice served in *Pous* 1303 held sufficient where suit instituted in *Bysakh* 1305.

Where a notice to an under-*raiyat* served in *Pous* 1303 called upon him to quit in *Bysakh* 1304, but the suit was not actually instituted until the first of *Bysakh* 1305, the Calcutta High Court held[1] that it was a good notice, and that the under-*raiyat* was liable to ejectment.

It has also been held[1] that—

Notice need not be signed by landlord.

the law does not apparently require that the notice should be actually signed by the landlord. It is sufficient if the notice is at the instance of the landlord calling upon the under-*raiyat* to quit the land: and it is quite immaterial whether the notice is actually given by the landlord himself or at his instance, provided that the notice signifies to the under-*raiyat* that the landlord has called upon him to quit the land.

Acquisition of occupancy-rights by under-raiyats.

That the law contemplates the acquisition of occupancy-rights by under-*raiyats* is clear from the provisions of section

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Tenancy (Amendment) Act, III. of 1898, and to direct that it shall be substituted for Rule 3, Chapter I. of the Rules published, under Notification dated the 21st December 1885 in Part I. of the *Calcutta Gazette* of the 23rd idem:—

"'Where no other mode of service of notice is prescribed by the Tenancy Act, or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure if the notice is addressed to only one person; and, if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served *in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, or* by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village-office, if any, where the rent is usually paid'"

[1] *Mohendra Nath Sarkar* v. *Biswa Nath Haldar* [1901], I. L. R., 29 Cal. 231; S. C., 6 C. W. N. 183.

113 and Illustration (2) to section 183, *post*. Section 113 provides against the enhancement in the course of a settlement under Chapter X. of the rent of the holding of an under-*raiyat* "having occupancy-rights." And Illustration (2) to section 183 declares—

> The custom or usage, that an under-*raiyat* should, under certain circumstances, acquire a right of occupancy, is not inconsistent with, and is not, expressly or by necessary implication, modified or abolished by, the provisions of this Act. That custom or usage accordingly, wherever it exists, will not be affected by this Act.

Hence it appears that the provisions of section 49 are not applicable to an under-*raiyat* who has acquired a right of occupancy: section 48 limits the rent that may be lawfully recovered from him: as long as he pays that rent, he is entitled to retain possession of the lands settled with him.

Right of an under-raiyat transferable by local custom or usage.

The rights of an under-*raiyat* may be transferable by custom or usage[1]—*see* section 183, *post*. Section 4, clause (*3*), *ante*, p. 80, seems to imply that under-*raiyats* may sublet.

Rights of under-raiyat heritable.

The view taken in Letters Patent Appeal No. 1398 of 1893,[2] that the rights of an under-*raiyat* are not heritable, has recently been controverted, and a Full Bench of the Calcutta High Court has held[3] that, irrespective of custom or local usage, the heir of an under-*raiyat* under an annual holding is entitled, on the death of the under-*raiyat*, to remain in possession of the land until the end of the then agricultural year for the purpose (if the land has been sub-let) of realizing the rent which might accrue during the year, or (if not sub-let) of tending and gathering in the crops.

Limitation.

An under-*raiyat* who has been dispossessed must sue to recover possession within two years from the date of dispossession (Art. 3, Schedule III., as amended by Bengal Act I., 1907, and E. B. Assam Act I., 1908).

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[1] Under the old law it was held that the *jamai* rights of a *kurpha* under-tenant were not transferable without the consent of the landlord—*Bonomali Bajadur* v *Koilash Chander Mojoomdar* [1879] I. L. R., 4 Cal. 135.

[2] *Keramulla Sheikh* v *Afajan Bibi*, reported in 8 C. W. N. 481*n*.

[3] *Arip Mondal* v. *Ramratan Mondal* [1904], 8 C. W. N. 479.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and Presumptions as to Amount of Rent.

Rules and presumptions as to fixity of rent.

50. (*1*) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(*2*) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that, if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent, shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not, after that date, apply to any tenancy, or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(*3*) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact

of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(*4*) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Scope of this Chapter.

Chapter VIII. embodies a variety of miscellaneous rules relating to the character, amount, and payment of rent, which, in some respects, have little or no relation to each other; for example, section 50 deals with the principle of fixity of rent, whilst section 52 contains rules relating to the alteration of rent in consequence of alteration in area; sections 53 to 55 declare how rent should be paid and appropriated; section 56 provides for the granting of receipts to tenants under various pains and penalties, &c. Section 50 contains in general the provisions of sections 4, 16, and 17 of Bengal Act VIII. of 1869 and sections 3, 4, 15, and 19 of Act X. of 1859.

Act X. of 1859 and Bengal Act VIII. of 1869.

Section 3 of Act X. of 1859 provided as follows:—

Raiyats who, in the provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent, which have not been changed from the time of the Permanent Settlement, are entitled to receive *pattas* at those rates.

Section 4 ran as follows:—

Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a *raiyat* in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Section 16 of Bengal Act VIII. of 1869 (and section 15 of Act X. of 1859) declared that—

No dependent *talukdar* or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the *raiyat*, who, in any province to which the provisions of this Act

may apply, holds his *taluk* or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII. of 1793, or in any other law, to the contrary notwithstanding.

And section 17 of Bengal Act VIII. of 1869 (and section 19 of Act X. of 1859) ran as follows:—

Whenever, in any suit under this Act, it shall be proved that the rent at which a *taluk* or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such *taluk* or tenure has been held at that rent from the time of the Permanent Settlement unless the contrary be shown, or it be proved that such rent was fixed at some later period.

New matter in present Act.

It will be noticed that the exception in sub-section (*1*) of section 50 of the present Act on the ground of an alteration in the area of the tenure or holding is new; similarly the proviso to sub-section (*2*), and sub-sections (*3*) and (*4*), are new.

Produce-rents excluded.

Under the old law, there was a great difference of opinion on the question whether the presumption relating to fixity of rent was applicable to produce-rents. The Legislature, in framing Act VIII. of 1885, deliberately excluded produce-rents from the purview of section 50.[1]

Predecessors in interest.

Predecessors in interest include persons from whom the tenant has acquired the tenure or holding by purchase, gift, or any other form of transfer. Under section 4 of Bengal Act VIII. of 1869, it was held[2] that the mode in which the tenant acquired the land did not affect the application of the rule.

Fixed rates of rent.

Under the old law the expression "fixed rates of rent" had given rise to considerable discussion and some difficulty. The language of section 50 ("at a rent or rate of rent") excludes all misapprehension regarding the intention of the Legislature.

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[1] *Gazette of India*, February 21st, 1885, Pt. V., p. 64; Selections, p. 421.

[2] *Tirthanund Thakoor* v. *Herdu Jha* [1882], I. L. R., 9 Cal. 252; *Ram Nath Lal Bhagat* v. *Watson* [1863], *per* Peacock, *C. J.*, 1 R. J. P. J. 54; *Rajkishore Mukerji* v. *Hureehur Mukerji* [1868], 10 W. R. 117; *Kashi Nath Lushkur* v. *Bama Sundari* [1868], 10 W. R. 429.

Decisions under the old law as to what was a variation of rent.

It was held[1] that uniformity in the amount actually paid was not required to be proved, but uniformity in the rate agreed upon between the parties, either expressly or impliedly. The real question to try was not whether the rent had been actually paid at a uniform rate, but whether the rent payable had or had not been changed within twenty years prior to the institution of the suit.[2]

Uniformity in the amount paid, although not conclusive on the question of the rent or rate of rent at which the land was held, was pronounced[3] to be strong evidence of the fact of fixity; but it was said that such evidence might be rebutted by showing that the actual rent was greater or less.

It was also held[4] that it was not necessary that there should be evidence directly bearing on every year of the period of twenty years which gives rise to the presumption of a holding from the time of the Permanent Settlement; it was sufficient if the whole interval is included between limits upon which the evidence bears, provided that the evidence is such as to lead to the belief that the rent was uniform throughout the intervening period.

Nor was it considered[5] absolutely necessary to prove uniform payment of rent up to the date of suit, even for the full period of the twenty years. A nominal reduction or a trifling difference in the *jama* was held[6] not to be a variation which would de-

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[1] *Moran & Co.* v. *Anand Chandra Musumdar* [1866], 6 W. R. (Act X. Rulings), p. 35.

[2] *Ahmed Ali* v. *Ghulam Ghafur* [1869], 11 W. R. 432; *Sham Charan Kundu* v. *Dwarka Nath Kabiraj* [1873], 19 W. R. 100.

[3] *Anandmoyi Dasi* v. *Sarnomoyee* [1866], 6 W. R. (Act X. Rulings) 83.

[4] *Rash Behari Ghose* v. *Ram Kumar Ghosh* [1874], 22 W. R. 487; *Katyani Debi* v. *Sundari Debi* [1865], 2 W. R. (Act X.) 60; *Gobind Karmokar* v. *Kumud Nath Bhuttacharji* [1865], 3 W. R. (Act X.) 148; *Tarini Kant Lahiri* v. *Kali Mohan Sarma* [1865], 3 W. R. (Act X.) 123; *Kamal Lochan Rai* v. *Zamiruddin Sardar* [1867], 7 W. R. 417; *Foschola* v. *Hara Chandra Basu* [1867], 8 W. R. 284; *Sarnomoyi* v. *Babu Khan Mundul* [1868], 9 W. R. 270.

[5] *Gaya Ram Datta* v. *Guru Charan Chatterjee* [1865], 2 W. R. (Act X. Rulings) 59; *Radhamoyi De* v. *Aghor Nath Biswas* [1876], 25 W. R 384.

[6] *Ram Rattan Sircar* v. *Chandra Mukhi Debia* [1865], 2 W. R. (Act X. Rulings) 74.

prive the *raiyat* of the benefit of the presumption of fixity of rent; but, in that same case, a decree for enhancement was given, because, though the tenant had held from 1220 F. S. at the same rent, a *kabuliyat* was produced for a term of years (1261 to 1265) showing a reduction of rent of 1 anna 3 pies. This variation was held to be merely nominal, but it was said—

Decisions under the old law (*contd.*).

> We think that the admission involved in the acceptance of a five years' temporary *kabuliyat* annuls the presumption of a fixed tenure from before the Decennial Settlement, such as is contemplated by section 4 of Act X. of 1859.

It is submitted that this view is open to question. The five years' *kabuliyat* was merely a paper transaction, never meant to be acted on, and the tenant was allowed to hold over indefinitely after its expiry.

For example, the difference of one rupee in a *jama* of sixty was held[1] not to be sufficient to destroy the presumption. *Per contra*, where the variation was substantial.[2] A variation in the rate of rent which does not affect the integrity of the *jama* was considered[3] not to rebut the presumption of a holding having been held at a fixed rent from the Permanent Settlement.

The change of *Sicca* rupees into Company's rupees was held[4] not to alter the fixity of the rate.

Where a tenant showed uniform payment of rent for nineteen years, with a slight difference (two or three annas) in the rate

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[1] *Anundolall Chowdhry* v. *Hills* [1865], 4 W. R. (Act X.) 33. *See* also *Munsoor Ali* v. *Bunnu Sing* [1867], 7 W. R. 282; *Haro Nath Rai* v. *Amir Biswas* [1864], 1 W. R. 230.

[2] *Gopal Chunder Bose* v *Mothur Mohun Banerjee* [1864], 3 W. R. (Act X.) 132.

[3] *Bisheshar Chakravarti* v. *Uma Charan Rai* [1867], 7 W. R. 44.

[4] *Kali Churn Dutt* v. *Shoshee Dassee* [1864], 1 W. R. 248; *Ram Coomar Mookerjee* v. *Rughoonath Mundul* [1864], 1 W. R. 356.; *Ram Kumar Mukharjya* v. *Raghu Nath Mandal* [1864], 3 R. J. P. J. 353; *Khattyani Debia* v. *Soondari Debia* [1865], 2 W. R. (Act X.) 60 F.S.C., 4 R. J. P. J. 154; *Tara Soondari Bormonoya* v. *Sibesvar Chatterji* [1866], 6 W. R. (Act X.) 51; *R. Watson & Co.* v. *Nund Lal Sircar* [1874], 21 W. R. 420. A *sicca* rupee exceeds the Company's rupee by one anna 5 *cowries* and 1 *kranti*.

Decisions under the old law (*contd.*).

for a long period prior thereto, he was allowed the benefit of the presumption.[1]

The payment by the *raiyat* of an illegal cess or *abwab* in addition to his rent did not constitute a variation which would affect the presumption.[2]

Nor did abatement of rent by order of a Civil Court in consequence of diluvion prove alteration of the rate of rent, or affect a *raiyat's* claim to the benefit of the presumption arising under the law.[3]

Where an abatement of rent was allowed in a lump sum upon a lump *jama* on account of lands rendered unculturable by the overflow of a river, the abatement was held[4] not to be such a variation of the rate of rent as to debar the *raiyat* from the benefit of the presumption of law.

When a tenant, holding land which had paid a uniform rent since the Permanent Settlement, relinquished a portion of his holding, and received a fresh *patta* from his landlord in which a deduction was made for the relinquished land, it was held[5] that the fixity of rent for the remaining portion was not affected by the arrangement, the *patta* being merely the confirmation of the tenancy already existing.

Similarly as regards a diminution in the *jama* caused by the alienation of a portion of the *jote*. Where a tenant sold a portion of his tenure, and obtained a distribution of the rent over the two parts, it was held[6] not to amount to a change of rent within the meaning of section 4 of Bengal Act VIII. of 1869, so as to deprive the tenant of the benefit of the presumption.

Similarly the purchaser of several holdings of cultivating *raiyats* could not, by uniting them, and paying one rent for

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[1] *Watson & Co* v. *Nund Lal Sircar* [1874], 21 W. R 420
[2] *Sumceroodeen Lushkur* v. *Huronath Roy* [1865], 2 W. R. (Act X.) 93.
[3] *Mussi. Reasoonnessa* v. *Tookin Jha* [1868], 10 W. R. 246.
[4] *Rudha Gobind Roy* v. *Kiamatu'la Talukdar* [1874], 21 W. R. 401.
[5] *Kenaram Mullick* v. *Ramkumar Mukerji* [1865], 2 W. R. (Act X.) 17.
[6] *Soodha Mukhi Dasi* v. *Rangatti Kurmokar* [1873], 20 W. R. 419.

the whole, change their character without the consent of the landlord.[1]

Decisions under the old law (*contd.*).

The mere alteration by the landlord of the rate of rent was held[2] not to prove variation unless the tenant had submitted to or paid the enhanced rent.

Consent-decrees were not considered[3] satisfactory evidence of the fact that the rent had really varied. But, where the claim had been contested, and a decree for rent at an enhanced rate obtained, it was not necessary to show collection.

In a suit[4] for enhanced rent brought by a landlord under Act X. of 1859, the benefit of the presumption under section 4, arising from twenty years' uniform payment of rent, was held not to avail the *raiyat* against a former decree of a competent Court declaring his holding to be liable to enhancement. The same view was expressed[5] by the Judicial Committee of the Privy Council with regard to the presumption under sections 15 and 16 referring to under-tenants or *talukdars*. Similarly it was held[6] that a decree of the old *Sadr* Court fixing an enhanced *jama* for a certain *jote*, passed before the promulgation of Act X. of 1859, did not become ineffectual by the fact that no rents had been recovered under it.

The acceptance of old rent for years subsequent to the date of a decree enhancing the rent was held[7] to be no waiver to the plaintiff's claim to the higher rate decreed. On the other hand, where a tenant's title to a *mukarrari* tenure was established under a judicial decree of 1792, the fact, that he was at some

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[1] *Mowla Bukhsh* v. *Jadunath Sadhukhan* [1874], 21 W. R. 267.

[2] *Gopal Mundal* v. *Nobokishen Mookerji* [1866], 5 W. R. (Act X. Rulings) 83.

[3] *Kally Kanto Roy* v. *Bibi Ashrufunnessa* [1865], 2 W. R. 326; *Joykishore Chowdhrain* v. *Baboo Gopal Lal Thakur* [1866], 6 W. R. (Act X.) 28.

[4] *Rakhal Dass Bose* v. *Shaik Golam Surwar* [1865], 2 W. R. (Act X.) 69.

[5] *Nuffer Chunder Pal Chowdury* v. *Jonathan Poulson* [1873], 12 B. L. R. 53; and *Hurro Nath Roy* v. *Gobind Chunder Dutt* [1875], 23 W. R. 352 (P. C.): 15 B. L. R. 120: L. R., 2 I. A. 193.

[6] *Doorga Charan Chatterji* v. *Doya Moyee Dossia* [1873], 20 W. R. 243.

[7] *Lauder* v. *Benode Lal Ghose* [1866], 6 W. R. (Act X.) 37. *See* also *Woodoy Narain Sen* v. *Tarini Churn Roy* [1869], 11 W. R. 496.

Decisions under the old law (*concld.*).

time forced to pay a larger rent than was due, did not render him liable to enhanced rent for ever.[1]

A *raiyat* who had held at a fixed rent from the time of the Permanent Settlement was held[2] to be entitled to demand a *patta* at that rate, and his rent could not be enhanced, even by an auction-purchaser at a sale for arrears of revenue. This principle would be applicable under the present law although it makes no provisions for interchange of *pattas* and *kabuliyats*.

It makes no difference in the right of the *raiyat* who has been paying an unvarying rent from the Permanent Settlement, whether the sale of the estate took place under Act I. of 1845, or under the existing law, Act XI. of 1859. Under Act I. of 1845, section 26, a tenure was only secure from enhancement when it had been held "at a fixed rent more than twelve years before the Permanent Settlement," but this has been modified by section 37 of Act XI. of 1859, which saves from enhancement tenures which have been held at a fixed rent from the time of the Permanent Settlement.[3]

An arrangement by which a certain rent in cash was to be paid in lieu of rent in kind was also held[4] not to affect the question of fixity. Where the tenant paid additional rent for land taken up in addition to his former holding, such payment did not defeat the presumption.[5]

The principles enunciated above applicable under the present law.

These principles would apply under the present law. The question relating to the variation of the *jama* or rent is a question of fact, and it is open to the Lower Appellate Courts to say, upon an examination of the evidence, whether the defendant had been paying at a uniform *jama* for twenty years or not.[6]

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[1] *Goluk Chunder Roy* v. *Sandes* [1866], 5 W. R. (Act X.) 32.

[2] *Saduk Sirkar* v. *Mahamaya Debia* [1866], 5 W. R. (Act X.) 16: 1 Ind. Jur. 77.

[3] *Hurryhur Mukerji* v. *Fuldo Lochan Dey* [1867], 7 W. R. 176 (F. B.).

[4] *Mitrajit Singh* v. *Tundan Singh* [1869], 12 W. R 14.

[5] *Sumeeroodeen Lushkur* v. *Huronath Roy* [1865], 2 W. R. (Act X. Rulings) 93.

[6] *Surja Kanta Acharjee* v. *Baneswar Shaha* [1896], I. L. R., 24 Cal. 251.

Applicability of this section in Land Acquisition cases.

In apportioning compensation-money, awarded under the Land Acquisition Act, between the landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the rent is fixed in perpetuity, the landlord is not entitled to more than the capitalized value of his rent.[1]

Sub section (2).

The presumption under sub-section (2) is a presumption of law, and it is not required that it should be specifically alleged by the tenant or put in issue. If the fact of uniform payment of rent for twenty years immediately before the institution of the suit or proceeding is established, it must be presumed, unless the contrary is shown, that the tenant has held at that rent or rate of rent from the time of the Permanent Settlement.[2]

Principle.

The mere fact, that the tenant has only been able to show that his rate of rent has not been changed from a particular year, will not preclude him from having the benefit of the presumption contained in this sub-section.

The presumption does not arise where the defendant admits commencement of tenancy at a later date than the Permanent Settlement.

But the presumption will not arise if the defendant admits that the tenancy commenced at a later date than the Permanent Settlement, for it must be carried back to the time of the Per-

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[1] *Dinendra Narain Roy* v. *Tituram Mukherji* [1903], I. L. R., 30 Cal. 801. *See* also *Nanda Lal Goswami* v. *Atarmani Dasi* [1908], I. L. R., 35 Cal. 763.

[2] *Shaikh Mongola* v. *Maharajah Kumud Chunder Singh Bahadur* [1900], 5 C. W. N. 60. The same principle was laid down under the old law—see *Mun Mohan Ghosh* v. *Husrut Sirdar* [1865], 2 W. R. (Act X.) 39; *Ram Ratan Sirkar* v. *Chandra Mukhi Debi* [1865], 2 W. R. (Act X.) 74; *Jaga Mohun Das* v. *Purna Chandra Rai* [1865], 3 W. R. (Act X.) 133; *Hem Chandra Chatterji* v. *Purno Chandra Rai* [1865], 3 W. R. (Act X.) 162; *Kunwar Raj Kumar Rai* v. *Assa Bibi* [1865], 3 W. R. (Act X.) 170; *Nyamatullah* v. *Gobind Chandra Dutt* [1865], 4 W. R. (Act X.) 25; *Dhan Singh Rai* v. *Chandra Kant Mukerji* [1865], 4 W. R. (Act X.) 43; *Guru Das Mandal* v. *Darbari* [1866], 5 W. R. (Act X.) 86; *Sham Lal Ghosh* v. *Madan Gopal Ghosh* [1866], 6. W. R. (Act X.) 37; *Girish Chandra Basu* v *Kali Krishna Haldar* [1866], 6 W. R. (Act X.) 57; *Rakhal Das Tewari* v. *Kinu Ram Haldar* [1867], 7 W. R. 242; *Pulin Behari Sen* v. *Nemai Chand* [1867], 7 W. R. 472; *Manikarinka Chaudhurani* v. *Anand Moyi* [1867], 8 W. R. 5; *Sudhisti Lal Chowdhri* v. *Nathu Lal Chowdhri* [1867], 8 W. R. 487; *Harak Singh* v. *Tulsiram Sahu* [1868], 11 W. R. 84; *Mitrajit Singh* v. *Tundan Singh* [1869], 3 B. L. R. (App) 88: 12 W. R. 14; *Harak Sing* v. *Tulsi Ram Sahai* [1870], 13 W. R. 215; *Tirthanand Thakur* v. *Herdu Jha* [1882], I. L. R., 9 Cal. 252.

manent Settlement to make the rent or rate of rent not enhanceable. Under the old law, also, it was held[1] that, where the pleadings contained any allegation inconsistent with the tenure or holding having been held since the time of the Permanent Settlement, *e.g.*, when they allege a commencement of the tenancy at a much later date, there would be no presumption in favour of the tenant.

To have that effect, the allegation must be explicit.

But, in order to have that effect, the allegation must be explicit. In other words, if there be no express statement on the part of the tenant that the tenancy commenced after the Permanent Settlement, the presumption arising from uniform payment of rent for twenty years must be rebutted; and, if not rebutted, the benefit of the presumption must be given to the tenant.[2]

Decision under the old law as to presumption and onus.

Under the old law, it was held[3] that the mere production by the landlord of a *patta* of a date subsequent to the Permanent Settlement, if not inconsistent with the inference that it was a continuance of a former state of things, would not interfere with or defeat the presumption, but it would throw upon the tenant the *onus* of showing that it was confirmatory of a previous holding.[4]

Tenant setting up a title adverse to the landlord.

Under the old law, it was held[5] that, when a tenant sets up a proprietary right adverse to his landlord, the presumption is rebutted; but, where he only pleaded a *mukarrari* tenure, that would not disentitle him to the benefit of the presumption.[6]

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[1] *Harikrishna Rai* v. *Shaikh Babu* [1864], 1 W. R. 5; *Lachmiprosaud* v. *Ramghulam Singh* [1865], 2 W. R. (Act X.) 30; *Ghura Sing* v. *Otar Singh* [1865], 4 W. R. (Act X.) 15; *Harak Sing* v. *Tulsiram Sahu* [1868], 11 W. R. 84; *Kunda Misra* v. *Gunesh Singh* [1871], 15 W. R. 193

[2] *Shaikh Mongola* v. *Maharajah Kumudchandra Singh* [1900], 5 C W. N. 608, *Maynamayi Dabi* v. *Harochundra Raidut* [1866], 6 W. R. (Act X. Rulings) 27.

[3] *Krishna Mohun Ghosh* v. *Ishan Chandra Mitra* [1865], 4 W. R. (Act X.) 36; *Luchmi Narain Saha* v. *Kuchil Kant Rai* [1866], 6 W. R., (Act X.) 46; *Karunamayi Dasi* v. *Shib Chandra Dey* [1866], 6 W. R. (Act X) 50; *Girish Chandra Basu* v. *Kali Krishna Haldar* [1866], 6 W. R. (Act X.) 57; *Ram Chandra Dutta* v *Jogesh Chandra Dutta* [1873], 19 W. R. 353; *Piari Mohun Mukerji* v. *Kailash Chandra Bairagi* [1874], 23 W R. 58.

[4] *Jainuddin* v. *Purna Chandra Rai* [1867], 8 W. R. 129

[5] *Bissonath Rai* v. *Bhairab Singh* [1867], 7 W. R. 145.

[6] *Chamarin* v. *Ainullah* [1868], 9 W. R. 451.

It is doubtful whether, under the present Act, an assertion of an independent right on the part of the tenant would deprive him of the benefit of the presumption if the facts proved give rise to it.

The present Act.

The presumption under sub-section (*2*) of section 50 is applicable to tenures and holdings situated in a permanently-settled estate, whether the settlement was made in 1793 or afterwards.[1] In the case referred to, it was contended on behalf of the landlord that section 50 applied only to tenures forming part of an estate permanently settled by the Permanent Settlement of 1793. On this point, MACLEAN, *C. J.*, observed as follows:—

The presumption applicable to tenures and holdings in a permanently-settled estate although the estate was not permanently settled in 1793.

I see no reason for so restricting the operation of the section; there are no words in the section which would warrant us in so restricting it, nor do I see how we can incorporate any such words, or why we should. Nor do I think that section 191 applies, for it is clear from the finding of the Lower Appellate Court that, though the estate was not permanently settled in 1793, it was permanently settled in 1811. Section 191 only applies to cases "when the area comprised in a tenure is situate in an estate which had never been permanently settled." But this estate was permanently settled in 1811, and I should have thought that fact was sufficient to dispose of the case being within section 191. I do not see why we should not read the language of the section literally, and in its ordinary acceptation.

And BANNERJI, *J.*, added:—

Now, although the "time of the Permanent Settlement" is referred to as the time from which the rent of a tenure, in respect of which exemption from enhancement is claimed, must be shown to have remained unchanged —and this may be done either by direct evidence, or by evidence sufficient under sub-section (*2*) to raise a presumption that the rent has remained unchanged from that date—there is nothing in the section to show that the tenure in question must be situate within an estate which was permanently settled at the time of the Permanent Settlement as defined in sub-section (*13*) of section 3 of the Act, namely, from the date of the Permanent Settlement of Bengal, Behar, and Orissa made in the year 1793. That being so, the fact of the estate, within which the tenure in question is situate, not having been permanently settled at that date, does not make any difference.

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[1] *Tamasha Bibi* v. *Ashutosh Dhur* [1900], 4 C. W. N. 513.

Bansi Das v. Jugdip Narain Chowdhury.

In one case,[1] it was held by the Calcutta High Court that the presumption relating to the fixity of rent did not apply to occupancy-*raiyats*. On this question the learned Judges expressed themselves thus:—

> As we pointed out in a recent case, the class of "*raiyats* holding at fixed rates" is specially defined by section 4 of the Act as meaning "*raiyats* holding either at a rent fixed in perpetuity, or at a rate of rent fixed in perpetuity;" in other words, the rent or rate of rent must be fixed in perpetuity at the commencement of the tenancy. We entertain grave doubts whether this class of *raiyats* can be created by the operation of section 50. All that that section says is, that a *raiyat* who has held at the same rent or rate of rent since the time of the Permanent Settlement shall not be liable to have his rent increased except on the ground of an alteration in the area of the holding. It does not say that such a *raiyat* is a *raiyat* holding at fixed rates, or that the tenancy shall be subject to the incidents of a holding at fixed rates as prescribed by section 18 of the Act. In this respect, therefore, we think that the judgments of the lower Courts are wrong.

Overruled by the Full Bench. Occupancy-raiyats holding their lands at uniform rent for twenty years are raiyats holding at fixed rates.

This view has been overruled by the Full Bench,[2] which has held that occupancy-*raiyats* are entitled to the benefit of the presumption under sub-section (*2*) of section 50; and that, where it was proved that such *raiyats* had held their lands at a uniform rent for twenty years, the Assistant Settlement Officer was right in recording them as "*raiyats* holding at fixed rates."

Section 50 limited to proceedings under the present Act.

The Calcutta Hight Court has held, in a recent case,[3] that the application of section 50 is limited to a suit or proceeding under the Bengal Tenancy Act, and consequently, where a suit was brought by the plaintiff for recovery of possession against certain persons alleged to be "trespassers," the defendants claiming to hold as tenants, the action was not a suit or proceeding under the Act until the defendants' allegation was established.

Effect of the proviso.

The proviso is intended to exclude, from the benefit of the presumption under sub-section (*2*), such tenancies or class of ten-

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[1] *Bansi Das* v. *Jugdip Narain Chowdhury* [1896], I. L. R., 24 Cal. 152, TREVELYAN and BEVERLEY, *JJ.*, p. 154.

[2] *Dulhin Golab Koer* v. *Balla Kurmi* [1898], I. L. R., 25 Cal. 744.

[3] *Rosamoy Parhait* v. *Srinath Moyra* [1902], 7 C. W. N. 132.

ancies as may be required, within any local area, by or under any enactment, to be registered, *and which are not so registered.*

At present there is no separate enactment requiring the registration of tenancies at fixed rents or rates of rent. But, under the provisions of section 102, clause (*b*), the Settlement Officer includes in the record-of-rights "the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy *raiyat*, or under-*raiyat*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure." And, when the particulars mentioned in section 102, clause (*b*), have been recorded in respect of any tenancy, the presumption under section 50 no longer applies to that tenancy (section 115).

Section 102, clause (b).

In dealing with the question whether the rent of a particular tenure or holding is enhanceable or not, it is only necessary to consider whether the *raiyat* or tenure-holder has held at a fixed rent, actually or presumably, from the Permanent Settlement.

The right of exemption from enhancement.

The right of exemption from enhancement is founded upon the simple fact of the land having been held at a fixed rate of rent from the time of the Permanent Settlement. When it is proved that the land has been so held, no further question arises as to whether it was so held under an *istimrari* or *mukarrari patta*, or whether the person claiming the right to enhance is an auction-purchaser or not.[1]

Sections 3 and 4 of Act X. of 1859 made no mention of the nature of the *patta* under which the land had been held, or of the right under which a fixed rent had been paid without alteration, but exempted from assessment lands which had been held at fixed rents from the time of the Permanent Settlement. The presumption required to be made was not that the land had been held by the *raiyat* and his ancestors, or by him and the persons who had

[1] *Ram Nath Lal Bhakt* v. *Watson & Co* [1863], R. J. P. J. 54; Board's Rep. 169, *per* PEACOCK, *C. J.*

power to alienate it to him, but simply that it had been held at a fixed rent.[1]

Sub-section (3). Increase or decrease of the holding. The sub-section formulates the view expressed by the Courts under the former law.

Sub-section (*3*) is important. It saves the presumption whether the orignal holding has decreased in extent by the separation of some land, or has increased by the amalgamation of other land or another holding. Sub-section (*3*) formulates the view expressed by the Courts[2] under the former law. Grave difficulties are sometimes experienced in attempting to apply this sub-section in proceedings under Chapter X. of this Act.[3]

Application of section 50 (3) to tenures.

It will be noticed, however, that it saves "the operation of the section," in other words, the presumption created by section 50, in the case of land held by a *raiyat;* it does not apply to tenures,[4] which must, therefore, be dealt with upon other principles. Under the former law, it was held,[5] that, if it were found that one of the holdings constituting the tenure had been created since the Decennial Settlement, the tenant could not ask for the benefit of the presumption; and that, if the rent of an undivided share of a tenure had been enhanced, in that case, the whole tenure was liable to enhancement.[6] How far these principles are applicable under the present law remains to be considered.

The mere fact, that the tenant fails to establish the document upon which he rests his allegation that his tenure or holding is of a permanent nature, is not sufficient to entitle the landlord to a

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[1] *Ram Nath Lal Bhakt* v. *Watson & Co.* [1863], R J. P. J. 54; Board's Rep. 169, *per* PEACOCK, *C. J.* See also *Dinendra Narain Roy* v. *Teturam Mukerjee* [1903], 7 C. W. N. 810.

[2] See *Hills* v. *Bisharath Mir* [1864], 1 W. R. 10; *Ram Kumar Mukerji* v. *Raghab Mandal* [1865], 2 W. R. (Act X.) 2; *Kenaram Mullick* v. *Ram Kumar Mukerji* [1865], 2 W. R. (Act X.) 17; *Gopal Chundra Basu* v. *Mathur Mohun Banerji* [1865], 3 W. R. (Act X.) 132; *Hills* v. *Hara Lal Sen* [1865], 3 W. R. Act) X.) 135; *Khoda Newas* v. *Nabo Krishna Raj* [1865], 5 W. R. (Act X.) 53; *Raj Kishore Mukerji* v. *Hurihur Mukerji* [1868], 10 W. R. 117; *Kashinath Lashkar* v. *Bama Soondari Debi* [1868], 10 W. R. 429; *Sudhamukhi Dasi* v. *Ram Gati Karmakar* [1873], 20 W. R. 419.

[3] *See* Purnea Final Report [1909], paras. 196, 197, p. 60.

[4] *Udoy Chandra Karji* v. *Nripendra Narayan Bhup* [1909], I. L. R., 36 Cal. 287.

[5] *Mowla Buksh* v. *Jadunath Sadukhan* [1874], 21 W. R. 267.

[6] *Sorat Soondary Dabia* v. *Anand Mohun Ghatak* [1879], I. L. R., 5 Cal. 273; 4 C. L. R. 448.

decree for ejectment. Long possession, coupled with conduct on the part of the landlord and tenant, may give rise to the presumption of a permanency, which, unless rebutted, would have the effect of making it conclusive.[1]

Evidence of long possession coupled with conduct.

The Privy Council rulings[2] are strongly in favour of accepting custom and course of dealing as giving rise to a presumption that tenancies are permanent, even in the absence of documents creating the tenancy, and even though the land be not agricultural but *urban*.

Acts which may give rise to the presumption of permanency.

Of course the consideration of the length of time during which the tenancy has been held, and of the particular character of the acts done by the tenant which are alleged to give rise to that presumption, must depend on the circumstances of each particular case. Where it was found that the defendants and their ancestors had held the land for a considerable time, that the landlord had permitted them to build a *pucca* house upon it, that the house had been there for a very considerable time, that it had been built or added to by successive tenants, and that the tenure had been transferred from time to time by succession and purchase, in which the landlord was found to have acquiesced, or of which he could not have been ignorant, since he accepted rent from the transferees, it was *held*[3] that the facts were sufficient to warrant the Court in presuming that the tenure was of a permanent nature.

Certain facts held not sufficient to give rise to the presumption.

But, where a tenancy was created by a *kabuliyat* and *patta* not containing words of inheritance, or of perpetual tenancy, the mere facts, that the land had been held by tenants at an unchanged rate of rent for a very long period, and that

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[1] *Durga Mohun Dass* v. *Rakhal Chunder Roy Chowdhry* [1901], 5 C. W. N. 801.

[2] *Naba Kumari Debi* v *Behari Lal Sen* [1907], I. L. R., 34 Cal. 902 (following *Upendra Krishna Mandal* v. *Ismail Khan Mahomed* [1904], I. L. R., 32 Cal. 41); *Nilratan Mandal* v. *Ismail Khan Mahomed* [1904], I L. R., 32 Cal. 51; and *Ramchunder Dutt* v. *Jugheschunder Dutt* [1873], 12 B. L. R. 229, 225.

[3] *Casperse* v. *Kadarnath Sarbadhikari* [1901], I. L. R., 28 Cal 738: S. C., 5 C. W. N. 858. Also see *Promoda Nath Roy* v. *Srigobind Chowdhry* [1905], I. L. R., 32 Cal. 648.

it had been the subject of successive transfers, were held[1] not to warrant the inference that the tenancy was, when first created, intended to be permanent, or was subsequently converted into such. The words, "you are to enjoy the land with great pleasure, *param sukhi*" do not create a permanent tenancy.[1] But this has now been dissented from, and it has been held[2] that the absence of the words *maurusi*, *mokarari*, and so forth from a lease do not indicate that it was *not* the intention of the lessor to grant a permanent lease.

Limits to the operation of this section.

Section 115, *post*, provides that, when the particulars specified in section 102 (*b*) have been recorded, section 50 shall no longer apply to that tenancy. Hence, in the course of time, with the extension of operations under Chapter X. of the Act, this section will cease to have any force.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent, and under the same conditions, as in the last-preceding agricultural year.

References.

Cf. section 5 of Act X. of 1859 and section 5 of Bengal Act VIII. of 1869.

Principle.

Section 51 deals with another class of presumptions, and refers particularly to cases where the tenancy is not evidenced by a written contract. It has been suggested that the section applies only to cases where the tenant holds over after the expiration of his lease. It seems, however, that the presumption of section 51 is of general application.

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[1] *Ismail Khan Mohamed* v. *Nilratan Mondal* [1902], 6 C. W. N. 352.

[2] *Ismail Khan Mahomed* v. *Jaigun Bibi* [1900], I. L. R., 27 Cal. 570; *Promoda Nath Roy* v. *Srigobind Chowdry* [1905], I. L. R., 32 Cal. 648. In the latter case, the land was within municipal limits.

Under the English law, when a tenant for a term holds over after the expiration of his lease, he becomes a tenant on sufferance; but, when he pays, or expressly agrees to pay, any subsequent rent at the previous rate, a new tenancy from year to year is thereby created upon the same terms and conditions as those contained in the expired lease.[1]

Holding-over after expiration of lease gives rise to a tenancy from year to year.

The same principle is applicable to the relations of landlords and tenants in this country. Accordingly it has been held,[2] that, when a tenant continues in occupation of his tenure or holding on the expiry of his lease, he does not thereby become a trespasser, so as to entitle the landlord to evict without a reasonable notice to quit. He continues to hold the land as a yearly tenant, on the same conditions as those contained in the expired lease, until the parties come to a fresh settlement.[3] But, if the holding-over continued after Act VIII. of 1885 came into operation, the validity of the stipulations must be governed by the provisions of that Act.[4]

A tenant holding over is not a trespasser.

Effect of stipulations entered into before Act VIII. of 1885.

Alteration of Rent on Alteration of Area.

Alteration of rent in respect of alteration in area.

52. (*1*) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was

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[1] Woodfall's "Law of Landlord and Tenant," 14th Ed., 230, 766.

[2] *Sadhu Jha* v. *Bhugwan Upadhya* [1866], 5 W. R. (Act X.) 17; *Ram Khelawan Singh* v. *Sundra* [1867], 7 W. R. 152; *Chuturi Singh* v. *Makund Lal* [1881], I. L. R., 7 Cal. 710.

[3] *Inayatulla* v. *Elahi Buksh*, W. R., Sp. No., 1864 (Act X), 42; *Jamaut Ali Shah* v. *Chattardhari Sahi* [1871], 16 W. R. 185; *Sheo Sahai Singh* v. *Bichan Singh* [1874], 22 W. R. 31; *Tara Chandra Bannerji* v. *Amir Mandal* [1874], 22 W. R. 394; *Alab Bibi* v. *Jugal Mandal* [1876], 25 W. R. 234; *Kishori Lal Dey* v. *The Administrator-General of Bengal* [1898], 2 C W. N. 303.

[4] *See* notes under s. 67, *post*, and s. 49, *ante*.

lost by diluvion or otherwise without any reduction of the rent being made; and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land, in consideration of an addition to his total rent or otherwise, with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description, and with similar advantages, in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure; and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear, to the rent previously payable, the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5)[1] When, in a suit under this section, the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

[(6) When, in a suit under this section, the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed, in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any *patta* or *kabuliyat*, or

Ben. Act I., 1907; and E. B. Assam Act I, 1908.

[1] Added by Ben. Act III. of 1898, s. 6.

(where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such *patta*, *kabuliyat*, or rent-roll after measurement.]

Extended to Orissa (1896).

Applicability of this section to all classes of tenancies.

As the word 'tenant' means a person who holds land under another person, and is, or, but for a special contract, would be, liable to pay rent [*see* section 3 (*3*), page 50, *ante*], tenure-holders, under- tenure-holders, and settled, occupancy, non-occupancy, and under-*raiyats* are all tenants, and therefore this section is applicable to all of them.

Object of the section.

The object of the section was to provide principles to regulate the alteration of rent on alteration of area as regards all classes of tenancies alike.

The former law.

Under the previous law, the principle regulating the alteration of rent on alteration of area in the case of tenures was different from that followed in the case of *raiyati* holdings, and the rulings in both classes of cases were confusing and conflicting.

A tenure-holder, intermediate between the proprietor and the *raiyat*, having a permanent transferable interest in land, was entitled to abatement of the rent previously paid if the area had been diminished by diluvion or otherwise;[1] but the proprietor was not entitled to an addition to the rent previously paid by a tenure-holder having a permanent transferable interest in the land on account of an addition to the area of the tenure by alluvion except when the tenant was made liable to an increase of rent by his engagement, or by established usage.[2]

Section 51 of Regulation VIII. of 1793 and the part of section 4, clause (*l*), of Regulation XI. of 1825, that related to

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[1] Field's Dige t, Art 24.

[2] *Brojendro Kumar Bhumik* v. *Upendra Narain Singh* [1882], I. L. R., 8 Cal. 706.

exemption from payment of rent for addition to the area of a tenure by alluvion, have been repealed by the present Act. So that section 52 of the Act now regulates the liability of tenures and under-tenures to alteration of rent on alteration of area, whether by alluvion, diluvion, or otherwise.

The former law—(*contd.*).

Section 18 of Bengal Act VIII. of 1869 made an occupancy-*raiyat's* rent liable to enhancement on the ground of the quantity of land having been proved by measurement to be greater than the quantity for which rent had previously been paid; and section 19 declared an occupancy-*raiyat* to be entitled to an abatement of rent if the quantity of land held by him was proved by measurement to be less than that for which he had previously been paying rent; but the Act contained no provisions for alteration of rent on alteration of area in the case of non-occupancy *raiyats* holdings.

The present law.

The present law contained in section 52 of Act VIII. of 1885, regarding alteration of rent on alteration of area, applies to non-occupancy tenants' holdings, as well as to other tenancies.

Principle of section 52.

There have been some conflicting decisions and much discussion as to what is meant by "excess area" in this section; but the principle of the section and the meaning of "excess area" appear to be clear. The principle is, that, if a tenant is let into occupation of a certain quantity of land for a certain lump rent, or at a certain rate of rent, and if he afterwards acquires more land over and above what was originally let, the surplus is excess area, and the tenant is liable to pay additional rent for it: while a tenant is entitled to a reduction of rent in the contrary case.

What is and what is not excess area.

There are, broadly speaking, two large classes of cases in which additional rent is claimed for excess area[1]—in one the excess area is real, and in the other it is fictitious. Where there is a real addition to the tenure or holding, the added area is excess, for which additional rent is justly and lawfully payable;

[1] Rent Commission's Report, para. 54.

where there is no real addition to the area, but a nominal increase of area on paper, as the result of re-measurement by a different standard, or by a different method, from that previously adopted, then there is no excess area.

How excess area may be acquired.

Land in excess of the area for which rent was previously paid may be acquired by a tenant—

(*a*) by encroachment on the waste or unoccupied land of the same estate belonging to his landlord;

(*b*) by alluvion; or

(*c*) by encroachment on the lands of a third person.

In all these classes of cases of encroachment [(*a*), (*b*), and (*c*)], there is a real addition to the tenant's tenure or holding, for which, when proved by measurement or otherwise, or when admitted, the tenant is justly liable to pay additional rent to his landlord. As to class (*c*), it has been held[1] that, when a tenant encroaches on the lands of a third person, and holds the land with his own until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit, but for that of his landlord; and, if he has acquired a title against a third person by adverse possession, he has acquired it for his landlord, and not for himself.

What is not excess area.

There is another class of cases in which additional rent is sometimes claimed for excess area, and in which the so-called excess is fictitious.

If a tenant is let into possession of a tenure or holding, with defined and ascertained boundaries, at a lump rental, the tenure or holding being supposed to contain a certain number of *bighas* or acres, and it should afterwards be found, on measurement, that the area expressed in *bighas* or acres, or whatever the denomination may be, is more than was supposed, it is manifest that there is no excess area for which the tenant is

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[1] *Naddyar Chand Shaha* v. *Meeajan* [1884], I. L. R., 10 Cal. 820.

liable to pay additional rent, the rental agreed upon being for the land included within the boundaries, whatever the nominal area may be.

Again, when land is let at a certain rate per *bigha*, and the area, at the time of letting, is found to be a certain number of *bighas*, it manifestly is not a ground for alteration of the rent that the number of *bighas* has afterwards been found by measurement to have increased or decreased unless the measurement was made by the same standard, and by the same method.

There are great varieties in the length of the pole adopted in the native system of measurement, and in the native methods of measurement. If, when a tenant was let into possession of a plot of land, the plot measured one *bigha* by the pole according to the rude native system of measurement then adopted, and the rent agreed upon was, say, Rs. 3, and if, by subsequent measurement by a different pole, or by a different system of measurement, such as the scientific system followed by the Survey Department, that same plot measured, or were called, a *bigha* and a third; it would obviously be unfair to increase the rent to Rs. 4 on the ground of excess area, the land being exactly the same. (As to the variations in the length of the pole and methods of survey, *see* notes to section 92, *post.*)

According to the native system of measurement, the *ails* or partitions between fields are generally excluded in calculating areas of holdings, but they are included in the areas ascertained by the scientific system followed by the Survey Department. This fact has to be borne in mind in considering whether, when areas, resulting from scientific surveys, differ from the areas previously recorded in the landlord's papers, there has been real increase or decrease of area. Hence the Board of Revenue has laid down the following instructions for the guidance of Revenue-officers in assessing additional rent for excess area, and in decreasing rent for diminution of area.[1]:— **Board of Revenue's instructions.**

[1] Bengal Settlement Manual, 1908, p. 114: ss. 420 to 425.

420. The Revenue-officer has to consider what the old area was; what the present area is; how much, if any, of the difference represents a real excess or deficit, after making allowance for different standards and systems of measurement; and what rate should be applied to the excess or deficit. His inquiries should take the following order:—

(1) Whether there is any proof or admission of encroachment or loss as regards any particular field or fields.

(2) Whether there is any positive proof or admission of a previous measurement; and, if so, how it was made, and by what standard:

(3) Whether in the absence of any positive proof of previous measurement, there is sufficient indirect evidence to show that there was such a measurement, *e. g.*, the custom of measurement before settlement; and, if so, by what standard it was probably made.

421. It should be noted that, in suits under section 52 of the Tenancy Act, when the landlord or tenants prove that, at the time the measurement on which the claim is based was made, there existed, in respect of the estate or permanent tenure, or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it *may* be presumed that the area of the tenure or holding specified in any *patta* or *kabuliyat*, or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such *patta*, *kabuliyat*, or rent-roll after measurement.

422. In making these inquiries, the Revenue-officer may find it useful to collect a number of cases in which he can identify a field or holding now held with a field or holding formerly recorded, or in which he can obtain the recorded area of a field or holding known to have been unchanged in shape and size, or presumed to be so from its being situated near the homestead or in the centre of cultivation, and a similar list of fields or holdings situated at the edge of the village or near existing waste lands, where it may be reasonable to suppose that former waste has been encroached on. The totals of two such lists will give him some reasonable ground for a conclusion as to whether there was a considerable or constant error in the old recorded areas, and if any allowance should be made for such error. It would be well also to consider what allowance should be made for error in old recorded areas, whether because of difference between the old system of measurement

and that now adopted, or because of the exclusion of *ails* or partitions between the fields in the old measurement and the inclusion of them in the new, or for other reasons :

From these materials the Revenue-officer will be able to decide what is the difference between the present and past measurements in respect of (*a*) system of measurement, and (*b*) standard adopted. On the other hand, if the Revenue-officer finds that the original areas were entered only by guess, it will not be advisable to adopt this method for settling fair rents:

(4) The Revenue Officer should next consider the amount of the difference between the present and the former recorded area, and what amount should be considered assessable excess:

(5) Then he should consider the rate for assessing such excess area. The village-rate, or the rate for that particular class of land, may be considered; and, under *clause 5 of section 52 of the Schedule*,[1] the previous average rate of rent of the holding may be applied. In the case of privileged tenants, the excess may often be assessed at privileged rates:

(6) The actual additional rent has then to be calculated; and this, added to the present rent, gives the new fair rent. Similar calculations will give the amount of rent to be deducted to make a fair rent in the case of a deficit of area.

It would be well for the Civil Courts also to bear these principles in mind when alteration of rent is claimed on the ground of alteration in area.

Sub-section (*5*) of section 52 was added by Bengal Act III. of 1898, section 6. The reasons for the addition were explained thus :— **Sub-section (5) of section 52.**

It has been held by some Special Judges, interpreting a decision[2] of the High Court, that, when additional rent is claimed on the ground of excess area, the landlord must indicate the precise plots or pieces of land acquired by the tenant in excess of the original holding, while section 52 itself does not provide for the assessment to rent of excess lands where there are no rates for lands of a similar description in the vicinity, but lump rentals.

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[1] *Sic. Read* sub-s. (*5*) of s. 52 of the Act.

[2] *Gouri Pattra* v. *Manager, Burdwan Raj Estate* [1892], I. L. R., 20 Cal. 579.

The section, as amended, indicates that it should not be always necessary, in order to prove excess area, to point out the particular plots that were acquired since the original letting, and provides a rule for assessment of such excess area, when proved, where there are no rates in force. Where the original letting was at so much a *bigha*, and it is shown by measurement, by the same standard and under the same conditions, that the tenant is holding a larger number of *bighas* than he is paying rent for, it should not be necessary for the landlord to point out the particular plots which the tenant has acquired in excess of the original area comprised in his holding.[1]

Excess area must arise from causes outside the landlords' control.

In a suit brought by a landlord for increase of rent on account of an increase in the area of a holding, it was found that the tenant was holding the same lands without any variation in the boundaries; that the landlord failed to prove what area was originally leased to the tenant; and there were no materials before the Court for determination of the question whether the rent was a consolidated rent or not: It was held[2] that the landlord was not entitled to any increase under this section. In order to succeed, the landlord must prove facts and circumstances showing that there was some reason not within the control of the landlord for additional lands being included in the holding.

Resjudicata.

In Special Appeal No. 1258 of 1907,[3] it was held that a suit for assessment of additional rent on the same additional area which formed the subject-matter of a previous suit is barred, as the decision in the previous suit operates as *res judicata*.

Sub-section (6) of section 52.

This sub-section was added by Bengal Act I. of 1907 and E. B. Assam Act I. of 1908, and was designed to make it easier for landlords whose papers are reliable to get an increase of rent under this section. The mere entry of areas in documents is not enough to justify the presumption that the entries were made after measurements, and, in practice, it will often be difficult for landlords to give legal proof that the former alleged measurement was an honest measurement.

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[1] Statement of Objects and Reasons to Bill of 1897, paras. 19 and 20.

[2] *Ratan Lall Biswas* v. *Jadu Halsana* [1906], 10 C. W. N. 46 (following *Gouri Patra* v. *Reily* [1892], I. L. R., 20 Cal. 579, and *Rajendra Lal Goswami* v. *Chunder Bhusan Goswami* [1901], 6 C. W N. 318.

[3] *Radha Kishore Manikya* v. *Umed Ali*, decided 17th June 1908.

When a tenant encroaches on the adjoining land of his own landlord, it has been held[1] that the landlord can, if he chooses, treat him as a tenant in respect of the land encroached upon; but the tenant has no right to compel the landlord against his will to accept him as a tenant in respect of the excess land. But, if the landlord has exercised his option, and treated the encroacher as a tenant for some time, he cannot afterwards treat him as a trespasser.[2] The tenant must be treated as a tenant of the new land, apart from his tenancy in respect of the original holding.

Encroachment on landlord's land.

Where, however, a co-sharer landlord claimed *khas* possession, with an alternative claim for rent, not merely of the additional land found in possession of the tenants over and above their own holdings, but in respect of the entire quantity of land found in possession of the tenants, including the lands of their old holdings, it was held[3] that section 52 applies, and that section 188 would bar the maintenance of a suit at the instance of a co-sharer landlord.

In a suit[3] brought by a *talukdar* of a certain *mauza* against the *dar-talukdar* for a declaration that he was entitled to get rent at a certain rate annually, and also for arrears of rent at that rate, and, as an alternative, for compensation for use and occupation of disputed land which was an accretion to the *mauza*, and in respect of which a settlement was made with the plaintiff by Government treating it as a separate estate, the defence was that the suit was not maintainable unless a rental was assessed in the first instance, and that no arrears of rent could be claimed, as there was no relationship of landlord and tenant between the parties: It was *held* that, looking to section 4, Regulation XI. of 1825, and section 52 of this Act, the landlord could not treat the disputed land as a separate tenancy; and that the increment was to be regarded as part and parcel of the parent

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[1] *Prahlad Teor* v. *Kedar Nath Basu* [1897], I. L. R., 25 Cal. 302.
[2] *Khondkar Abdul Hamid* v. *Mohini Kant Saha* [1900], 4 C. W. N. 508.
[3] *Assanula Bahadur* v. *Mohini Mohan Das* [1899], I. L. R., 26 Cal. 739.

estate, and that the landlord was entitled to get assessment of rent on the excess land, but was not entitled in the suit to back-rent or compensation for use of the land. In that case it was said—

> The lands have formed as an accretion to the defendant's tenure; rent must be assessed upon such lands, and the plaintiff cannot recover any rent from the defendant until it be, in the first instance, determined what is the additional rent he ought to pay for it, though, no doubt, if he had taken proceedings, under section 52 of the Bengal Tenancy Act, for the purpose of recovering rent in respect of the entire tenure, including the lands which have formed by way of accretion to the defendant's tenure, relief might have been given to him after such investigation as the provisions of that section require.

Proof of excess area.

It has been held[1] by the High Court that, to entitle a plaintiff to a decree for increase of rent on the ground of an alteration of the area of the defendant's holding, the plaintiff must show that the defendant is holding lands in excess of what he is paying rent for; and, in order to do that, he must show for what quantity of land the defendant is paying rent.

It was further held[2] by the High Court, before the passing of the Amending Act (III. of 1898), *that* the Settlement Officer, in determining the liability to additional rent, was bound, under section 52, sub-section (*2*), clause (*c*), to consider the time during which the tenancy had lasted without dispute as to rent or area; and *that* the mere fact, that, on a measurement made under the authority of Government under Chapter X. of the Bengal Tenancy Act, it was found that tenants generally were in possession of lands in excess of the area entered in the *zamindar's* papers and their rent-receipts, did not necessarily prove that the *zamindar* was entitled to additional rent for the excess areas; *also that* it was incumbent on the *zamindar* seeking increase of rent on the ground of excess area, where settlements of holdings were of very old date, and the lands were not let by areas ascertained by accurate survey, to show that the lands held by the *raiyats* were

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[1] *Surja Kunt Acharjee* v. *Baneswar Shah* [1895]. I. L. R., 24 Cal. 251.
[2] *Gouri Pattra* v. *Reily* [1892], I. L. R., 20 Cal. 579. *See* also p. 274, *ante*.

in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment, or that the settlement was made on the basis of measurement which was found to be inaccurate on a fresh measurement being made by the same length of measure.

But sub-section (*5*), which was introduced by the Amending Act of 1898, was intended to modify the law as laid down in this decision, and was meant to show that, when it has been proved, by measurement by the same standard, and by the same system of measurement, and under the same conditions, that the tenant is holding a larger number of *bighas* or a larger quantity of land than he has previously been paying rent for, it shall not be necessary for the landlord to prove or point out the particular plots which the tenant has acquired in excess, whether by encroachment, alluvion, or otherwise.

Reduction of rent on account of decrease of area

Under section 178 (*3*) (*f*), *post*, nothing in a contract made after the passing of this Act can preclude a *raiyat* from applying for a reduction of rent under section 38 or section 52. In a case in which a suit was compromised by a *solehnama*, in which it was stated that, in consideration of certain indulgences allowed by the plaintiff in the manner in which rent would be realized, certain *jotdars* agreed to pay rent at 13 annas a *bigha* for 4,300 *bighas*, the area mentioned in the *kabuliyat* being 3,800 *bighas*, and not to claim remission of rent on any ground whatever, and the lower Courts granted an abatement in respect of 57 *bighas*, it was held[1] on appeal by the High Court that the *solehnama* was a valid and binding transaction. But the question was not raised in that case whether the tenant was a *raiyat* or a tenure-holder, or whether he could contract himself out of his right to abatement of rent on reduction of area, as there was, in fact, no decrease of area, since the tenant knew at the beginning of the tenancy that the area was really 3,800 *bighas*. It has also been held[2] that,

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[1] *Satyendra Nath Thakur* v. *Nil Kantha Singha* [1893], I. L. R., 21 Cal. 383.
[2] *Tripp* v. *Kali Das Mukherji* [1864], W. R., Sp. No., 122.

where the *raiyat* knew that the area of land leased to him was less than that mentioned in his *patta*, he was not entitled to claim abatement of rent on that ground, nor where he came into less land through his own fault.[1] Where a decree had determined that lands leased in a *mukarrari* lease with a fixed rent thereon were less in extent than those specified in the *pattas*, the lessors not having a title to the whole, and the lessee had obtained possession of the less estate, it was held[2] that he was entitled to a corresponding abatement of the rent reserved.

Co-sharer tenant cannot claim abatement.

A co-sharer tenant cannot claim abatement of rent under this section.[3] The expression 'tenant' in the section does not include a co-sharer tenant who has only a fractional share in the tenure. It means the tenant of a tenure or holding, and not one of many tenants. If a co-sharer tenant sues for reduction of rent on the ground of deficiency of area, he must make all the joint landlords and all the joint tenants parties to the suit.

Co-sharer landlord cannot claim enhancement.

A suit for additional rent on the ground of excess area must also be brought by all the co-sharer landlords;[4] but, when the lands for which rent is claimed form no part of the original holding, and are outside its boundaries, section 188 does not bar a suit by a fractional co-sharer, because the right to claim rent is inseparable from the landlord's position, and is not a thing merely authorized by this Act.[5]

Suit for measurement.

A suit for measurement, based upon a contract made before the passing of the Bengal Tenancy Act, does not come within the purview of section 52.[6] And, where the *kabuliyat* provided that the tenant (the holder of a *dar-maurasi patta* under a *mukarrari dar*) should have his name registered in the *zamin-*

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[1] *Sita Nath Basu* v. *Sham Chand Mitra* [1872], 17 W. R. 418.
[2] *Imam Bundi Begum* v. *Kamleswari Pershad* [1894], I. L. R., 21 Cal. 1005.
[3] *Bhoopendra Nath Dutt* v. *Romon Krishna Dutt* [1899], I. L. R., 27 Cal. 417.
[4] *Gopal Chunder Das* v. *Umesh Narain Chowdhry* [1890], I. L. R., 17 Cal. 695.
[5] *Khondkar Abdul Hamid* v *Mohini Kant Saha* [1900], 4 C. W. N. 508. *See* also *Gobind Chandra Pal* v. *Hamidulla Bhinan* [1903], 7 C. W. N. 670, noted under s 188, *post*.
[6] *Matungini Dasi* v. *Ram Das Mullick* [1902], 7 C. W. N. 93.

dar's serishta, and pay rent direct to him, and that, in case the area of the tenure should exceed the area specified, he should pay for each excess *bigha* certain additional rents respectively to the *zamindar* and the *mukarraridar*, it has been held[3] that section 183 was no bar to a suit for measurement brought by the *zamindar*, and that the *zamindar* and the *mukarraridar* were both entitled to have the land measured. *See* section 90, *post*.

Payment of Rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

What included in "rent."

The word "rent" in sections 53 to 68 includes also money recoverable under any enactment for the time being in force as if it was rent—*see* section 3 (*5*), *ante*, page 51.

Instalments in which rent is payable.

Under section 20 of Act X. of 1859 and section 21 of Bengal Act VIII. of 1869, the instalments or *kists* in which rent was payable were regulated by the terms of the *patta* or agreement, where there was one; and, where there was not, by the established usage of the *pargana*;[1] and, where a *raiyat* agreed to pay rent by monthly instalments, he was held to be bound by the terms of the agreement. Under the present section, rent is payable in four equal instalments on the last day of each quarter of the agricultural year unless there be an agreement or established usage to the contrary. But a landlord cannot sue a *raiyat* for arrears of rent more frequently than once in 3 months from the date of a previous suit (*see* section 147, *post*).

Interest on arrears of rent.

An arrear of rent can only bear interest from the expiration of the quarter of the agricultural year in which the instalment falls due (*see* section 67, *post*). Their Lordships of the

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[1] *Chytunno Chunder Roy* v. *Kedar Nath Roy* [1870], 14 W. R. 99.

Privy Council have held[1] that section 67 only applies to cases in which the rent is payable quarterly. Where monthly instalments are fixed by contract or usage, there is nothing to prevent the landlord from claiming interest on the amount of an instalment remaining unpaid at the end of each month, such amount being an arrear under section 54 (*5*), *post*.

Stoppage of monthly suits for rent.

One of the objects of this section was to put a stop to the practice, which was said to prevail in some places, of suing tenants monthly for instalments of rents by way of harassment.

Meaning of "established usage" in section 53.

In one case[2] it has been held that by "established usage" in this section is meant, as under the old law, the established usage of the *pargana* in which the property is situated, and not the practice previously prevailing between the landlord and his tenant. In another case,[3] it was said that the established usage of the "locality" is meant.

Liability of an auction-purchaser.

Since rent is regarded as not accruing from day to day, but as falling due only at stated times according to the contract of tenancy, or, in the absence of a contract, according to the general law laid down in this section (53), an auction-purchaser of a tenure or holding, in respect of which rent is claimed, is liable for the whole of the instalment which accrues due after the date of his purchase, though he may not have been in possession for the whole period in respect of which the instalment is due, although, as a matter of fact, his title becomes perfected only on the date of confirmation of the sale under rule 92, Order XXI. of the present Code of Civil Procedure (Act V. of 1908).[4] The purchaser can, it was said, always protect himself by paying for the property only its value, regard being had to the liability with which it is burdened.

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[1] *Hamanta Kumari Debya* v. *Jogendra Nath Roy* [1894], I. L. R., 22 Cal. 221.

[2] *Hira Lal Das* v. *Mathura Mohan Roy Chowdhry* [1888], I. L. R., 15 Cal. 714.

[3] *Watson* v. *Sri Krishna Bhumik* [1893], I. L. R., 21 Cal. 132.

[4] *Satyendra Nath Thakur* v. *Nil Kantha Singha* [1893], I. L. R., 21 Cal. 383.

But when a landlord brings a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of confirmation of sale, and the former tenant is liable for the arrears accruing between the date of sale and confirmation.[1]

Liability in case of sale in execution of decree for rent.

The sums recoverable as rent, mentioned in the note to section 3 (*5*) on pages 67 and 68, *ante*, are payable in the same instalments as rent, except where otherwise prescribed by law.

Instalments in which sums recoverable as rent are payable.

Section 53 cannot, obviously and from the nature of the case, apply to produce-rents, which are paid when, or shortly after, the crop is cut and harvested.

Produce-rents.

54. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place for payment of rent.

(*2*) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may, from time to time, make rules, either generally, or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(*3*) Any instalment or part of an instalment of rent, not duly paid at or before the time when it falls due, shall be deemed an arrear.

Extended to Orissa (September, 1891).

See sections 61, 147, *post*.

References.

Rent becomes due "at the last moment of the time which is allowed to the tenant for payment."[2]

Rent when due.

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[1] *Karoonamoy Banerjee* v. *Surendra Nath Mukerjee* [1898], 2 C. W. N. cccxxvii.

[2] *Kashi Kant Bhattacharjee* v. *Rohini Kant Bhattacharjee* [1880], I. L. R., 6 Cal. 325.

Rent where to be paid.

As a debtor has to seek out his creditor, and pay what is due, so a tenant must go to his landlord, and pay his rent[1] when it falls due. Such payment must be tendered, either in the landlord's village-office, or in some convenient place fixed by the landlord, except when the Local Government has authorized the payment to be made by postal money-order. If the landlord has no village-office, and has fixed no convenient place, the tenant should still go to the landlord, and tender the rent as it falls due.[2]

Valid tender stops interest.

A valid tender of rent at the time it falls due, even though not accepted, saves the running of interest under section 67, *post*, *i. e.*, rent "tendered" ceases to be "in arrear" though it is still due.[3]

Rent made payable by money-order.

The Local Government has, in a Resolution dated 19th March 1891 published in the *Calcutta Gazette* of the 25th *idem*, Part I., page 287, authorized tenants to pay their rents by money-order in all districts in which the present Act is in force. Sums recoverable as rent may also be paid by money-order—*see* note to section 3 (5), on page 68, *ante*.

The annual Land Revenue Administration Reports show that only a small fraction of the rents payable in this province are sent by money-order.

Produce-rents.

A suit will lie for the money-value of the produce payable as rent at the time it fell due.

Appropriation of payments.

55. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

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[1] *Sharat Sundari Debi* v. *Collector of Mymensing* [1865], 5 W. R. (Act X.) 69.

[2] *Fakir Lal Goswami* v. *W. C. Bonnerji* [1900], 4 C. W. N. 324.

[3] *Kripa Sindhu* v. *Ananda Sundari* [1908], I. L. R., 35 Cal. 53 (following *Jagat Tarini Dasi* v. *Naba Gopal Chaki* [1907], I. L. R., 34 Cal. 305).

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Extended to Orissa (September, 1891).

Cf. sections 59, 60, and 61 of the Indian Contract Act (Act IX. of 1872). **References.**

As a general principle, when there are several debts owing to one person from another, the option lies with the debtor, in making the payment, to declare to which debt he intends it should be applied. Such declaration need not be express; it may be inferred from circumstances.[1] This principle is embodied in sections 59 and 60[2] of the Indian Contract Act, which declare in substance that, when a debtor owes several debts to a person, and tenders a payment, it is open to him to specify the debt to which the payment is to be credited; but, if the debtor does not specify the debt to which the payment is to be applied, the creditor may apply it to any lawful debt due to him, whether its recovery is barred by limitation or not. Section 55 of the Bengal Tenancy Act enunciates the same principle. **Principle of the section.**

It was expected by the framers of this Act that the effect of sections 55 to 59 would be to put a check on, or a stop to, a practice that prevailed in some parts of the country, and in Behar especially, according to which receipts for rent did not specify the year or *kist* or instalment to which any particular payment was **Objects aimed at by sections 55 to 59 not fully attained.**

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[1] *Marryats* v. *White* [1817], 2 Stark 101; *Sangat Lall* v. *Banjee Nath Rai* [1886]. I. L. R., 13 Cal. 164.

[2] Section 59 of the Contract Act, upon which section 55 of Act VIII. of 1885 is based, provides as follows: "Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly."

Section 60 declares, "Where the debtor has omitted to intimate, and there are no circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

credited, but merely showed the payment as credited to current demand and arrears. The result of this practice was, that the tenant had no means of knowing how his rent-account stood at any particular time in the landlord's books. It is doubtful, however, whether the object aimed at has been attained. The Commissioner of the Patna Division wrote in 1893 as follows:—

> I have frequently brought to notice the almost universal disregard by the Civil Courts of the provisions of sections 56, 57, and 58. In no district that I have served in have I ever known a Civil Court reporting a landlord for punishment under the third clause of the last-mentioned section although the offence referred to constantly comes to the notice of every Rent-suit Munsiff in Bengal. On the contrary, I think I am correct in saying that it is still a common practice with the Civil Courts to allow rent-receipts of any form and kind to be filed before them without taking any notice of this breach of the law.

In some other divisions, also, great laxity appears to prevail in the matter of giving receipts in conformity with the requirements of the law. On this account amendments were made in section 58, *post*, which, *see*.

Acceptance of rent subject to the tenant's declaration.

If the rent is accepted by the landlord subject to the declaration of the tenant regarding the year to which the amount should be credited, the payment must be credited accordingly; but, if the landlord does not accept the amount so tendered, the tenant may deposit it under sections 61 to 64, *post*.

The old law

Under the old law, it was held[1] that the payments in each year must be presumed to be for the current year till the contrary was shown, and that the surplus payments must, *primâ facie*, be presumed to be for the past, and not for the subsequent, years; but payments could not be credited to previous arrears beyond the period of limitation. These principles, save and except the restriction as to the period of limitation, are applicable under the present Act. They were laid down in 1865, before the passing of the Contract Act, which, as already stated, formulated the

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[1] *Taramoni Dasi* v. *Kali Chuan Surmah* [1864] W. R., Sp. No. (Act X. Rulings,, 11.

general principles relating to the rights of creditors and debtors. The Limitation Act bars the remedy, but not the right, and consequently, if a debt is actually due and payable, although the right to recover it by action may be barred, the creditor would be entitled to appropriate any payment not specially appropriated to the discharge of such debt. Consequently, if a *raiyat* showed payment of rent for 1265 and 1266, it was to be presumed that all previous claims had been satisfied. The landlord would be entitled to carry to the credit of 1264 any of the payments made in 1266 provided he showed that, at the end of the year 1264, there was an arrear due to him.[1]

General payment may be applied at the option of the landlord.

But a general payment made in any particular year, without proof that it was in satisfaction of the rent due for that year, may, at the option of the landlord, be applied in satisfaction of the arrears of the previous years.[2] Under the Indian Contract Act (IX.) of 1872, as well as the ordinary rules of law, when neither the debtor nor any circumstance indicates to which of several debts a payment is to be applied, the creditor may apply it, at his discretion, to any debt actually due and payable to him from the debtor.[3] A payment of rent should be credited to the oldest rents first, and not to current rents, unless so specifically stated by the party making it.[4]

Discretion of the Court in considering the question of appropriation.

It is open to the Court dealing with the facts of a case to say whether, taking the receipts which extended over a number of years, and having regard to the circumstance that they did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the rents due in respect of previous years.[5]

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[1] *Ranee Sarat Sundari Debia* v. *Brodie* [1864], 1 W. R. 274.
[2] *Ahmuty* v. *Brodie* [1864], W. R., Sp. No. (Act X. Rulings), 15.
[3] *Rameswar Koer* v. *Mehdi Hussain Khan* [1898], I. L. R., 26 Cal. 39 (P. C.): S. C., L. R, 25 I. A. 179.
[4] *Rani Surno Moyee* v. *Singhroop Bebee* [1864], W. R., Sp. No. (Act X. Rulings), 134.
[5] *Surja Kanta Acharjee* v. *Baneswar Shaha* [1896], I. L. R, 24 Cal. 251.

An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent for three years may afford some presumption that the older items in the account were satisfied, and, if that presumption could not be rebutted, might be an answer to an action on the older demand.[1] In a suit[2] by a landlord against the tenant for arrears of rent for a portion of the year 1283, the defendant pleaded payment, and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time for which the arrears were demanded, but swore that they were payments made in respect of arrears due on account of previous years, it was *held* that the defendant, having pleaded payment, was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed.

Authority to effectuate a discharge.

The authority to effectuate a valid discharge may, therefore, be either express or implied. If express, it may be either in writing or given verbally. It may be implied from conduct, or established from circumstances

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Receipts and Accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (*1*) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt, for the amount paid by him, signed by the landlord.

(*2*) The landlord shall prepare and retain a counterfoil of the receipt.

(*3*) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in

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[1] *Inayat Hussain* v. *Dedar Buksh* [1864], W. R., Sp No. (Act X. Rulings), 97, but *see*, contra, *Mitrajit Singh* v. *Chokar Narain Singh* [1865] 2 W. R. 58.

[2] *Bibee Syefun* v. *Rudder Sohey* [1881], I. L. R., 7 Cal. 582.

Schedule II. to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form, either generally, or for any particular local area or class of cases.

(*4*) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Extended to Orissa (September, 1891), and to the Sonthal Parganas (March, 1904).

References. *Cf.* sections 187 and 188, *post*, sections 188 and 226 of the Contract Act (IX. of 1872), section 11 of Bengal Act VIII. of 1869, and section 10 of Act X. of 1859.

Principle. The present section entitles a tenant to a receipt on payment of any rent.[1]

Receipts by whom to be signed. Sub-section (*3*) of section 187, *post*, declares that "Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf." It follows, therefore, that a receipt signed by the agent of the landlord "authorized in writing in that behalf" is a compliance with the requirements of the law; and, if that is done, the tenant cannot insist upon the landlord personally signing the receipt. But this does not mean that, if a receipt is given by a person verbally authorized by the landlord to collect rent on his behalf, it will not be a sufficient legal discharge, so far as the liability of the tenant is concerned. Accordingly it has been held[2] that authority to

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[1] *Narendro Chandra Lahiri* v. *Munshi Asmatulla* [1896], 1 C. W. N. xix.
[2] *Gopinath Chakravurti* v. *Uma Kanta Das Roy* [1896], I. L. R., 24 Cal. 169.

give receipts may be either in writing or verbal. If there are several landlords, in that case it must be shown that the authority was from them all.

Rule of estoppel.

But the provisions of section 56 and sub-section (*3*) of section 187, *post*, do not affect any rule of estoppel. For example, if a tenant proves that he has paid rent to a person who has, with the actual or presumable cognizance of the landlord, been in the habit of receiving rent on behalf of the landlord, a receipt granted by such a person would be a valid acquittance.

Receipts signed by the landlord's agent.

It has been held[1] that receipts signed by the landlord's agent, if shown to be authentic, are *primâ-facie* evidence of payment of rent, but not conclusive. It would depend on the facts of the case what amount of evidence should be required to displace the presumption furnished by the receipt. For example, if it bear no date, and is signed by a discharged servant of the landlord, a much smaller quantum of evidence may be needed to rebut the tenant's allegation than would be the case if the servant were still in the employ of the landlord.

Evidence as to genuineness of receipts.

As the tenants, especially of the *raiyat*-class, are more or less illiterate, the Courts have held[2] that, where no evidence is forthcoming of the handwriting of the person who is alleged to have given the receipt, there must be some satisfactory account of the custody from which they come. It is not necessary for the tenant to call the writer, even if alive, as a witness, so long as he can give other satisfactory proof from which it may be inferred that the documents produced by him are genuine.[3]

Some evidence of the genuineness of receipts must be given[4] before they can be accepted as evidence of the fact of payment.

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[1] *Amir Buksh* v. *Yusuf Ali* [1874], 22 W. R. 489.

[2] *Umesh Chandra Mukerji* v. *Bama Dasi* [1867], 7 W. R. 15.

[3] *Ganga Narain Dass* v. *Saroda Mohun Rai* [1869], 12 W. R 30: S C., 3 B. L. R. (A. C.) 230.

[4] *Dumaine* v. *Utam Singh* [1870], 13 W. R. 462; *Lachmiput Singh* v. *Jangali Das* [1868], 9 W. R. 147; *Ramjadu Ganguli* v. *Lukhi Narain Mandal* [1867], 8 W. R. 488; *Krittibas Mytee* v. *Ramdhan Kharah* [1867], 7 W. R. 526: B. L. R., Sup. Vol., 658; *Bharat Rai* v. *Ganga Narain Mahapatro* [1870], 14 W. R. 211, and, contra, *Govind Karmokar* v. *Kumudnath Bhuttacharji* [1865], 3 W. R. (Act X.) 148.

But, if the *dakhilas* extend over a long period, it is not necessary that the tenant should call all the *gomashtas* of his *zamindar* during that time. All receipts which have been given to the tenant personally can be proved by him as well as by any other witness.[1] As to such receipts as relate to a period prior to his holding, he can show that they come from proper custody. The proof of *dakhilas*, like that of any other document, is governed by the ordinary rules of evidence; and, if they are not properly attested, they furnish no evidence of payment of rent.[2] Where a party filing *dakhilas* deposed that the amounts of rent he had paid were according to the sums entered in the *dakhilas*, the deposition was held[3] not to prove the *dakhilas*, being merely a statement that a certain sum had been paid for rent.

Forms of receipts.

By a Notification dated 30th January 1888, published at page 83, Part I., of the *Calcutta Gazette* of February 1st, 1888, the Local Government, under the proviso to sub-section (*3*), sanctioned a special form of receipt for certain areas then under settlement in the Rajshahi District. By a Resolution, dated the 8th May 1890, published at page 452, Part I. of the *Calcutta Gazette* of May 14th, 1890, the Local Government sanctioned a special form of receipt to be used by landlords receiving rent paid by money-orders, a separate receipt being given for each holding (for forms of receipts, *see* page 453 of the *Calcutta Gazette* of that date, as also page 650, Part I., of the *Calcutta Gazette* of July 24th, 1889). The Local Government, by Notification No. 872-T. R. dated 10th October 1899, published on page 1397 of Part I. of the *Calcutta Gazette* of November 1, 1899, prescribed a special form of rent-receipt for use in the Western Duars of the Jalpaiguri District; and, by Notification

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[1] *Rajeshari Debi* v. *Shibnath Chatterji* [1865], 4 W. R (Act X.) 42; *Raj Mahammed* v *Banoo Rasma* [1869], 12 W. R. 34; *Madhub Chandra Chowdhuri* v. *Promotho Nath Rai* [1873], 20 W. R. 264; *Surja Kanta Acharjee* v. *Baneswar Shaha* [1896]. I. L. R., 24 Cal 25'.

[2] *Udiat Zuman* v. *Mohiuddin Ahmed* [1868], 9 W. R. 241; *Lachmipat Singh Dugar* v. *Uma Nath Mandul* [1868], 10 W. R 490; *Reazunissa* v. *Buku Chaudhrain* [1869], 12 W. R. 267.

[3] *Kailash Nath Haldar* v. *Uma Nath Rai Haldar* [1869], 11 W. R. 170.

No. 2409 dated the 18th October 1902, published in the *Calcutta Gazette* of 22nd *idem*, Part. I., page 1404, prescribed another for the Orissa Division. By Notification No. 1339 (*Calcutta Gazette* of March 1st, 1904, pages 347, 349) a special form for use in the Sonthal Parganas was prescribed—Subsequent Notifications prescribed special forms for various parts of Chota Nagpur, but its own special Act would appear to have superseded these Notifications.

Bengal Act VI. of 1908.

Stamp-duty on receipts.

By clause (*c*), Article 53, of Schedule I. to Act II. of 1899, receipts granted for any payment of rent by a cultivator on account of land assessed to Government revenue are exempt from stamp-duty. Receipts granted to cultivators by owners of revenue-free property, if for sums exceeding Rs. 20, should be stamped under the said Article.

Tenant entitled to full discharge or statement of account at close of year.

57. (*1*) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt, in full discharge of all rent falling due to the end of the year, signed by the landlord.

(*2*) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in the Form of Account given in Schedule II. to this Act, or in such other form as may from time to time be prescribed by the Local Government, either generally, or for any particular local area or class of cases.

(*3*) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Extended to Orissa (September, 1891).

Under these provisions the tenant may, under the circumstances mentioned in sub-section (*1*), obtain a full discharge, or, under sub-section (*2*), a statement of account. **Principle.**

The Local Government, by Notification No. 377-L. R. dated 22nd January 1894, published in the *Calcutta Gazette* of the 24th January 1894, Part I., page 83, has, under sub-section (*2*), prescribed a modified Form of Account for use in the Orissa Division. **Form of account.**

58. (*1*) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit. **Penalties and fine for withholding receipts and statements of account, and failing to keep counterparts.**

(*2*) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year, prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

[(*3*) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections **Bengal Act I., 1907; E. B. Assam Act I., 1908.**

such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(*4*) The Collector may hold a summary inquiry under sub-section (*3*), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months from the date of failure, or upon the report of a Civil Court.

(*5*) Where, in any case instituted under sub-section (*3*), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(*6*) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (*3*) or awarding compensation under sub-section (*5*); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(*7*) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(*8*) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the

production of documents, in the same manner as is provided in the case of a Court under the Code of Civil Procedure.[1]]

Extended to Orissa (1891), and (*1*) and (*3*) to the Sonthal Parganas (1904).

Cf. section 11 of Bengal Act VIII. of 1869 and section 10 of Act X. of 1859. **References.**

This section prescribes the penalties and fines to which landlords subject themselves by withholding "without reasonable cause" receipts and statements of account, and for failure to keep a counterfoil or copy of a receipt or statement. The reasonable cause is a question of fact, but, in the absence of any such cause, the Judge has no discretion as to the award of damages; his discretion is only limited to the amount.[2] **Discretion of Court.**

The operation of section 58 is not limited to the case when the payment has been made by the registered tenant. When a landlord receives rent from a person whose name has not been registered, and thus recognizes him as his tenant, he renders himself liable to the penalty provided for by section 58 if he refuses to deliver a receipt without reasonable cause.[3] **Unregistered tenants.**

Sub-section (*3*), as amended, prescribes that proceedings for the enforcement of the penalty should be instituted before the Collector. A proposal made in the draft bill (in 1906-7) to require Civil Courts to report such cases to the Collector was negatived, because it was thought that Civil Courts would generally disregard this instruction. **Forum.**

59. (*1*) The Local Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts, with counterfoils, and of state- **Local Government to prepare forms of receipt and account.**

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[1] Act V. of 1908.

[2] *Zameerudunnessa Khakun* v. *Phillipe* [1864], 1 W. R. 290; *Jaharuddin Muhommed* v *Debi Persad Singh* [1870], 13 W. R. 391; *Brojo Nath Dey* v. *Shumbhoo Chander Chatterji* [1872], 18 W. R. 25.

[3] *Narendro Chandra Lahiri* v. *Munshi Asmatulla* [1896], 1 C. W. N. xix.

ments of account, suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Extended to Orissa (September, 1891).

Use of forms printed by Government.

The sale by Government of rent-receipt forms and forms of annual account has greatly decreased, and has practically ceased in many districts. The use of forms, printed at the Government Press, is now confined to Government estates under direct management, and to some wards' estates. Paged books and loose sheets are also kept for sale to the public. The law does not require that the forms kept for sale by Government should alone be used. Receipt forms may be and are printed and sold by private presses.

Effect of receipt by registered proprietor, manager, or mortgagee. Bengal Act VII. of 1876.

60. Where rent is due to the proprietor, manager, or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876,[1] as proprietor, manager, or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager, or mortgagee.

Extended to Orissa (September, 1891).

The Land Registration Act.

Section 78 of the Land Registration Act (Bengal Act VII. of 1876) declares as follows:—

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[1] Ben. Act VII. of 1876.

No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act; and no person, being liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property.

Section 79 of the same Act provides as follows:—

The receipt of any proprietor, manager, or mortgagee, whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

Principle of section 60.

Section 60 of the Bengal Tenancy Act, which should be read with the above-mentioned sections of the Land Registration Act, declares that the receipt of the proprietor, manager, or mortgagee, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent, and debars the person liable for the rent from pleading, in defence to a claim by the person registered, that the rent is due to a third person.

The old law.

Under the old law, it was held[1] that the mere fact, that a person was registered under the provisions of Bengal Act VII. of 1876 as proprietor of the land in respect of which he claimed rent, was not sufficient to entitle him to sue for it. He had to prove that the relation of landlord and tenant existed, and that he had a good title to the estate of which he was registered as owner. "It is true," it was said by GARTH, *C. J.*, "that the owner of the estate cannot sue for rent unless he is registered; but it by no means follows that one who is not the true owner can sue, because he is registered."

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[1] *Ram Kristo Das* v. *Sheikh Harain* [1882], I. L. R., 9 Cal. 517.

Ruling under the present Act: only registered proprietors can sue for rent.

Since the Bengal Tenancy Act has been passed, it has been ruled[1] that no person claiming as proprietor can recover rent from a tenant unless his name has been registered under the Land Registration Act. It is immaterial how the transfer of the proprietary interest has been effected; whether it is a case of transfer by purchase or by succession, the transferee must apply for registration of his name before he can sue for rent. If some only of several joint proprietors have been registered, the decree will be given only in favour of those who have been registered, and for a share of the rent proportionate to the share for which they are registered.[2]

Registration may be effected after institution of suit.

The suit of an unregistered proprietor will not be dismissed if a certificate is produced showing that the plaintiff has been registered as proprietor before the trial—in other words, registration may be effected after the suit is instituted, but before it comes on for trial,[3] or even before a decree is passed;[4] and, if a certificate of such registration is produced, the suit may proceed. The right to the rent of an estate is in the true proprietor, although unregistered, and his right to sue for rent is not taken away by anything in sections 78-81 of the Land Registration Act (Bengal Act VII. of 1876), which do not affect the cause of action, but merely put an impediment in the way of realizing the rent until he has complied with the law by registering his name.

Remedy of the proprietor when rent recovered by a person registered.

A receipt given by a person registered as proprietor is a valid discharge for the rent; but, if the registered proprietor is not the true proprietor, the latter can seek his remedy from him, and recover from him any rent that may have been wrongly paid to him.

Transfer of lands appertaining to an estate from one district to another.

When lands appertaining to an estate in one district were transferred to another, but were never entered in the revenue-

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[1] *Panak Lall Mander* v. *Thakur Prasad Singh* [1898], I L. R., 25 Cal. 717.

[2] *Nil Madhab Patra* v. *Ishan Chandra Sinha* [1898], I L. R., 25 Cal. 787.

[3] *Ali Muddin Khan* v *Hira Lal Sen* [1895], I L. R., 23 Cal. 87, (Full Bench dissenting from the view expressed in some previous cases).

[4] *Hari Krishna Dass* v. *Brindabun Shaha* [1896], 1 C. W. N. 712, which has been followed in other cases.

roll of the district to which they were transferred, and separate revenue was not payable for them in the latter district, it has been held[1] that it was not necessary for the proprietors to register their names in that district, inasmuch as the estate itself was borne on the revenue-roll of the district from which the lands were transferred.

Tenant cannot deny right of registered proprietor.

A tenant cannot deny the right of a registered proprietor to distrain, and plead payment of the rent to a third person whose name has not been registered;[2] so that, if a tenant pays rent to the true proprietor, whose name has not been registered, he may be sued for it by the registered proprietor; nor can a tenant plead that the rent was due to a mortgagee to whom the landlord had assigned part of his interest, and whose name has not been registered.[3]

Tenant making payments in good faith to a person not registered.

But, when a tenant, in good faith, and in the reasonable belief that the land held by him was included in the estate of a third person, attorned to such person four years before the institution of the suit, it was held[4] that this did not estop the defendant from pleading that the rent was due to a third person notwithstanding that the plaintiffs were registered proprietors. The effect of the attornment was to oust the plaintiffs from possession, and their remedy would apparently be, it was said, to bring a suit to recover possession of the land from which they had been ousted.

Persons included in the word "manager."

The word "manager" in section 78 of the Land Registration Act (Bengal Act VII. of 1876) points to two classes of persons—*first*, to all persons who are appointed by the Collector, the Court of Wards, or any Civil or Criminal Court, to manage any estate or revenue-free property or any part thereof; and, *secondly*, to persons who are in charge of estates or revenue-free property or any

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[1] *Surendra Narain Singh* v. *Jai Nath Das* [1897], 1 C. W. N. civ.
[2] *Hanumon Ahir* v. *Govinda Kuar* [1895], 1 C. W. N. 318.
[3] *Hem Chandra Misri* v. *Raja Sir Sourindra Mohan Tagore* [1898], 5 C. W. N. 482.
[4] *Durga Das Hazra* v. *Samast Akan* [1895], 4 C. W. N. 606.

part thereof on behalf of a minor, idiot, or lunatic, or on behalf of a religious or charitable foundation [*see* section 3 (*6*) of that Act].

What managers, etc., must be registered.

A manager appointed under section 95 of the present Act must have his name registered before he can recover rents.[1] So must an administrator, who is, as such, representative of a deceased proprietor[2] and legal owner of his property. But a receiver appointed by the Court, suing for arrears which accrued during the lifetime of the deceased proprietor, need not have his name registered, to entitle him to sue.[3] A suit for arrears of rent accruing during the lifetime of a proprietor is maintainable by his representatives, though not registered, as they sue, not as proprietors, but as the legal representatives of the deceased proprietor;[4] but a suit for arrears accruing after the death of the proprietor[5] is not maintainable by his legal heir and representatives unless their names are registered. A *patnidar* need not have his name registered in order to be entitled to sue for rent.[6] The *patni* interest does not merge in the proprietary interest.

Proprietor and mortgagee.

It has been held[7] that the original proprietor is not debarred by section 69 from suing for rents (even though the name of the person to whom he had given an usufructuary mortgage for a term of years was still entered in the Land Registration Registers) on the expiry of the term of the usufructuary mortgage.

Deposit of Rent.

Application to deposit rent in Court.

61. (*1*) In any of the following cases, namely —

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[1] *Makbul Ahmed Chowdhry* v. *Giris Chandra Kundu* [1892], I. L. R., 22 Cal. 634.

[2] *McIntosh* v. *Jharu Mollah* [1894], I. L. R., 22 Cal 454.

[3] *Belchambers* v *Hassan Ali Mirza* [1898] 2 C. W. N 493.

[4] *Nagendra Nath Basu* v *Satadal Basini Basu* [1899], I. L. R., 26 Cal. 536.

[5] *Jibanti Nath Khan* v. *Gokul Chander Chowdhry* [1891], I. L. R., 19 Cal 760.

[6] *Sukurulla Kasi* v. *Bama Sundari Dasi* [1897] I. L. R., 24 Cal. 404.

[7] *Syed Hosain Mastaba* v. *Mathar Mahto* [1910], 14 C W. N. xvi., dissented from *Sundar Dass* v. *Charitoa Rai* [1896], 1 C. W. N. clxiii.

(*a*) when a tenant tenders money on account of rent, and the landlord refuses to receive it, or refuses to grant a receipt for it;

(*b*) when a tenant, bound to pay money on account of rent, has reason to believe, owing to a tender having been refused, or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ-fide* doubt as to who is entitled to receive the rent—

the tenant may present, to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*)—the name of the person to whose credit the deposit is to be entered;

in case (*c*)—the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify; and—

in case (*d*)—the names of the person to whom the rent was last paid, and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52[1] of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee[2] of such amount as the Local Government, from time to time, by rule directs.

Extended to Orissa (September, 1891).

Commencement of ss. 61 to 64.

Sections 61 to 64 came into operation on the 1st February 1886.—*See* Act XX. of 1885.

Waiver of production of money

It is the right of the person to whom the money is due to dispense with its actual production at the time of tender, otherwise such production is necessary to constitute a valid tender. The waiver may be in express terms, or by implication.

How tender should be made.

Under the old law, it was held[3] that the tender could not be subjected to any condition, and must be made at the proper place, and to a person authorized to receive the debt. But a

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[1] *I. e.*, of Act XIV. of 1882 (the old Code). But the above reference should now be taken as made to rule 15 (2) and (3) of Order No. VI. of Act V. of 1908 (the Code now in force and entirely repealing the former).—*See* s. 158 of the latter.

[2] For the fees leviable on applications to deposit rent, *see* Rule 105 in Chap. VII. in Appendix V. to this work (*post*), and High Court's General Rules and Circular Orders, Civil, Chap. II., Pt. IV., Rule 9, p. 78.

Clause (37) of the Notification of the Government of India, No. 4650 of the 10th September 1889 (published at p. 506 of Pt. I. of the *Gazette of India* of 14th September 1889), declares that "The proper fee to be charged upon an application to deposit in any Court rent not exceeding the sum of fifteen rupees shall be as follows:—

"If the amount deposited does not exceed Rs. 2-8, one anna; if the amount deposited exceeds Rs. 2-8, but does not exceed Rs. 5, two annas; if the amount deposited exceeds Rs. 5, but does not exceed Rs. 10, four annas; if the amount deposited exceeds Rs. 10, but does not exceed Rs. 15, six annas: provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-s. (2) of s. 61 of the Bengal Tenancy Act, VIII. of 1885"

As to the exemption just mentioned, *see* also High Court's General Rules and Circular Orders, Civil, Chap. II., Pt. IV., Rule 9, p. 78.

[3] *Ishan Chandra Rai* v. *Khajah Ahsanoollah* [1871], 16 W. R. 79.

mistake at the time of tender, regarding the property in respect of which it is made, would not justify the landlord in refusing the tender.[1] These enunciations would be applicable under the present Act.

On the construction of this section, *see* I. L. R. (1908), 35 Cal., pp. 34-60.[2] It is 'enabling,' not 'mandatory.' *See* notes on sections 62 and 67, *post*.

Notice of deposit when there are several landlords.

It has been held[3] that, where there are several landlords, the notice of deposit must be served upon all of them. Since the co-sharer landlords are jointly and severally entitled to the rent, service of notice on one is not sufficient to reduce the period of limitation provided by the general Statute (Act IX. of 1908) to the special period of six months provided by Article 2 (*a*) of Schedule III. (*post*) to the present Act.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (*1*) If it appears to the Court to which an application is made under the last-foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent, and give a receipt for it under the seal of the Court.

(*2*) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant, and deposited as aforesaid, in the same manner, and to the same extent, as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last-foregoing section—
by the person specified in the application as the person to whose credit the deposit was to be entered;

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[1] *Uma Churn Setl* v. *Hari Pershad Misra* [1868], 10 W. R. 101.
[2] *Kripa Sindhu Mukherjee* v. *Ananda Sunderi Debi.*
[3] *Rup Chand Mahton* v. *Gudar Sing* [1900], 5 C. W. N. xxx; I. L. R., 29 Cal. 283.

in case (*c*) of that section—by the co-sharers to whom the rent is due; and—

in case (*d*) of that section—by the person entitled to the rent.

Extended to Orissa (September, 1891).

Principle

When a tenant entertains a *bonâ-fide* doubt as to who is entitled to receive the rent, and deposits the rent, such deposit operates as an acquittance, and forms a good defence to an action for rent.[1]

Deposit can be made only of rent due.

The deposit can only be of rent that has become due.[2] This was held[3] under the old law, but the principle would be applicable under the present Act.

Deposit of rent by transferee of holding or tenure.

Under the present Act, it does not seem necessary that the deposit should be made by the registered tenant. A deposit of rent by a transferee of a holding or tenure on behalf of the tenant has been held[3] to be a valid deposit. The law does not require that the application for deposit must be made by the tenant in person.

Principle underlying ss. 61 to 64.

The principle underlying sections 61, 62, 63, and 64 has been thus explained[4] by the Calcutta High Court:—

Section 61 of the Act lays down the case in which a tenant may present to the Court an application for permission to deposit his rent, as also the particulars which the petition is to contain. Section 62 provides that, if it appears to the Court that the applicant is entitled to make the deposit, it shall receive the rent, and grant a receipt. It would appear, upon a consideration of these two sections, that, if a verified application is made to the Court, and if it contains the grounds upon which an application under section 61 is authorized to be made, and if it also contains the particulars which must be mentioned, the Court is bound to receive the rent, and give a receipt to the tenant. The Court is not authorized at this stage of the

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[1] *Stalkartt* v. *Guru Dass Kundu Chowdhury* [1894], I. L. R., 21 Cal. 680.
[2] *Taramoni Kunwari* v. *Jiban Mandur* [1866], 6 W. R. (Act X. Rulings) 99.
[3] *Behary Lall Mukerjee* v. *Basarat Mandal* [1897], I. L. R., 25 Cal. 289.
[4] *Sirdhar Roy* v. *Rameswar Sing* [1887], I. L. R., 15 Cal. 166 *See* also *Kripa Sindhu* v. *Ananda Sunderi Debi* [1908], I. L. R., 35 Cal. 34-60.

proceeding, or at any subsequent stage, to enter into a judicial inquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit. We then find that, under section 63, the Court is to affix a notification in the Court-house on the receipt of the money; and, if it is not paid away within the period of 15 days, a notice of the receipt of the said deposit is to be served upon the *zamindar*; and, under section 64, the *zamindar* may apply if he pleases to receive the amount deposited.

These are the only provisions which the Bengal Tenancy Act has laid down in regard to the deposit made by a tenant; and it will be observed that there is no machinery whatsoever provided for the Court to enter into a judicial inquiry in connection with the matter of this deposit, nor is there any provision entitling the *zamindar* to come in, and to be heard, upon the subject.

Notification of receipt of deposit.

63. (*1*) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(*2*) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61—cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section—cause a notice of the receipt of the deposit to be posted at the landlord's village-office, or in some conspicuous place in the village in which the holding is situate; and—

in case (*d*) of that section—cause a like notice to be served, free of charge, on every person

who it has reason to believe claims or is entitled to the deposit.[1]

Extended to Orissa (September, 1891).

Limitation.

See Schedule III., Part I., Art. 2 (*a*), which prescribes that, in these cases, a suit for arrears of rent must be brought within 6 months of the date of service of the notice of the deposit.

Payment or refund of deposit.

64. (*1*) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the Court with which the rent was deposited.

(*4*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Extended to Orissa (September, 1891).

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[1] As to service of notices under this section, *see* Rule 32 of Chap. V. in Appendix V. to this work, *post*. Except in case (*c*) of s. 61, the notices may be sent by registered post.

The mere deposit of rent in the Collector's office by the purchaser of an under-tenure, in his own name, and that of the registered tenant, is not sufficient notice to the *zamindar* of such purchase, nor is the mere acceptance by the *zamindar* of rent so paid an acknowledgment on his part of the purchaser as his under-tenant; but, under the old law, it was held[1] that it would be otherwise when there is acceptance with notice, notwithstanding that the transfer had not been registered.

Deposit of rent by purchaser of under-tenure.

In a case under the present law, where *patni* rent had been deposited by the *patnidar*, and the landlord drew it out upon a petition stating that it was due in respect of the tenure in dispute, it was held[2] that the taking of such rent upon that allegation was *primâ facie* an admission that the tenure was still subsisting, and an election by the landlord to treat it as valid.

Effect of withdrawal of rent deposited.

See High Court's G. R. and C. O., Civil, Chap. II., p. 78, Pt. IV., Rule 9, A. (10).

Court-fees leviable.

Arrears of Rent.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates, or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears in case of permanent tenures, holdings at fixed rates, or occupancy-holdings.

Extended to Orissa (September, 1891).

Cf. sections 21 and 22 of Act X. of 1859 and sections 22 and 23 of Bengal Act VIII. of 1869; section 3, clause (*9*), p. 51, *ante*; and sections 148, 169, and 188, *post*.

References.

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[1] *Mritunjaya Sirkar* v. *Gopal Chandra Sirkar* [1868], 2 B. L. R. (A. C.) 131; S. C., 10 W. R. 466.

[2] *Modhu Sudhan Singh* v. *Rooke* [1897 (P. C.)], I. L. R., 25 Cal. 1; S. C., L. R., 24 I. A. 164, and 1 C. W. N. 433.

Principle.

The provisions of this section have effected a radical change in the position of permanent tenure-holders and *raiyats* holding at fixed rates, as well as occupancy-*raiyats*. In the first place, the section protects them against ejectment for arrears of rent; and, in the second place, it declares that such tenures or holdings shall be saleable in execution of a decree for the rent thereof, and that the rent shall be a first charge thereon—in other words, that the tenures or holdings shall be regarded as hypothecated for such arrears. *See* also sections 10, 18, 25, respectively at pages 95, 113, 160, *ante*.

The old law.

Under the old law, all *raiyats* were liable to ejectment for non-payment of rent, and so were farmers or lease-holders not having a permanent or transferable interest in the land.[1] But, where an under-tenure was transferable by sale, either by the title-deeds, or by the custom of the country,[2] it was held[3] that a landlord, who had a decree for arrears of rent, could not eject the tenant, but could only sell the tenure or *jote* in question.

Although, under the former law, a permanent tenure-holder could not be ejected for arrears of rent, yet, if there was a condition to that effect in his lease, such condition could be enforced.[4] He could, however, protect himself from ejectment by paying up the arrears decreed within fifteen days of the date of the decree.[5]

In declaring that the rent shall be a first charge on the tenure or holding in respect of which it has accrued due, the Legislature gave expression to the views that had been deliber-

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[1] Ss. 22 and 23 of Bengal Act VIII. of 1869.

[2] S. 50 of Bengal Act VIII. of 1869.

[3] *Tirbhobun Sing* v. *Jhona Lall* [1872], 18 W. R. 206; *Krishtendra Roy* v. *Aina Bewa* [1882] I. L. R., 8 Cal. 675; S. C., 10 C. L. R 399; *Fakir Chand* v. *Fousdar Misra* [1884] I. L R, 10 Cal 547.

[4] *Balaram Das* v. *Jogendro Nath Mullick* [1873], 19 W. R. 349; *Mumtaz Bibi* v. *Grish Chandra Chowdhry* [1874], 22 W. R. 376.

[5] *Jan Ali Chawdhry* v. *Nityanand Basu* [1868], 10 W. R. (F. B.) 12; *Kamala Sahai* v. *Ram Ratan Neogi* [1869], 11 W. R. 201; *Duli Chand* v *Meher Chand Sahu* [1872], 12 B. L R. 439; *Mathur Mohun Pal* v. *Ram Lal Basu* [1879], 4 C. L. R. 469; *Mohamed Amir* v. *Priag Singh* [1881], I. L. R., 7 Cal, 566; *Duli Chand* v. *Raj Kissore* [1882], I. L. R., 9 Cal. 88.

ately expressed by the Courts under the former law. It had been held[1] that a *zamindar*, who had obtained a decree for arrears of rent of a transferable tenure, was entitled to sell the tenure, and that a person who had obtained a transfer of such a tenure, which he had not registered, and could not show a sufficient reason for not registering, was bound by the sale, and could not set up a title which he had acquired by a previous sale; also[2] that a decree for rent obtained by a landlord against his registered tenant rendered the tenure comprised in the decree liable to sale, although such tenure had passed into hands other than those of the judgment-debtor.

Decree for arrears of rent against an insolvent tenant.

In another case,[3] the landlord had obtained a decree for arrears of rent of an under-tenure against a tenant who became an insolvent, when the whole tenure vested in the Official Assignee. On an application by the landlord, under sections 59 and 60 of Bengal Act VIII. of 1869, for an order that the tenure should be sold for its own arrears, the Official Assignee contended that the decree-holder was only entitled to prove in the insolvency for the amount of his debt. The objection was overruled, and it was held that, whether the arrears became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree.

ight of the landlord.

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[1] *Sham Chand Kundu* v *Brojo Nath Pal* [1873], 21 W. R. 941 S. C., 12 B. L. R. 484. Before this case, the decisions were not uniform, *e.g.*, in *Khubari Rai* v. *Raghubar Rai* [1863], 2 W. R. 131; *Gopal Mandal* v. *Subhudra Boistobi* [1866], 5 W. R. 205; *Safarunnissa* v *Sari Dhoopeci* [1867], 8 W. R. 384; and *Sadhan Chandra Basu* v. *Guru Charan Basu* [1871], 15 W. R 99, it was held that a sale in execution of a decree for rent should have priority over a sale held in execution of a decree of the Civil Court, whilst, in *Pranbandhu Sarkar* v. *Sarbasundari Debi* [1864], 3 B. L. R. (A. C) 52 (note): S C., 10 W. R. 434; *Ram Baksh Chatlangia* v. *Hridoimoni Debi* [1868], 10 W R. 446; *Tirthanand Thakur* v. *Paresmon Jha* [1870], 13 W. R. 449; *Samaruddin* v. *Harish Chandra Karmokar* [1869], 3 B. L. R. (A.C) 49 : 13 W. R. 451 (note); *Daulat Ghasi Chowdhri* v. *Manwar* [1871], 15 W. R. 341; and *Wahed Ali* v. *Sadik Ali* [1872], 17 W. R. 417; it was declared that the produce only was hypothecated, but not the land.

[2] *Rash Behari Bundopadhya* v. *Peary Mohun Mookerjee* [1878], I. L. R., 4 Cal. 346.

[3] *Chunder Narain Singh* v. *Kishen Chand Golecha* [1883], I. L. R., 9 Cal. 855.

Landlord in the position of a first mortgagee.

The provisions of section 65 of the present Act are, however, explicit. And, when a tenure or holding is sold otherwise than in execution of a decree for arrears of rent, it is sold subject to the lien of the landlord on it for any rent due at the time of sale; the landlord is thus in the position of a first mortgagee, as far as the rent is concerned.[1] Accordingly, when the tenure or holding is sold in execution of a mortgage-decree, the purchaser takes it subject to the charge for the rent which had accrued due in respect thereof at the time of its purchase, in the sense at least that he was bound to pay it, if the landlord proceeded to execute his decree by bringing the tenure to sale.[2] And, if he paid the amount to save the tenure from sale, he had no right of recourse against the former tenant.[3]

Tenure or holding sold in execution of a decree for its own arrears.

But, where a tenure or holding is sold in execution of a decree for its own arrears of rent, it passes to the purchasers freed from all liability for previous arrears.

Rent falling due during the time that a tenure belongs to any particular tenure-holder is a first charge on the tenure, only so long as it is his, and has not been sold for arrears of rent. And this, we think, is made clear beyond doubt by clause (*c*) of section 169, which enacts that, if any surplus remains of the proceeds realized by the sale of a tenure in execution of a decree for arrears of rent after satisfying that decree, any rent falling due between the date of the suit in which the decree was passed and the date of sale shall be paid therefrom to the decree-holder. This provision of the law evidently shows that the Legislature intended that the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein shall be transferred from the tenure to its sale-proceeds, and that the tenure shall pass to the purchaser at a sale for arrears of rent free of all liability created upon it by the default of the previous holder.[4]

The charge created by section 65 on the tenure or holding is to be enforced by the sale of the tenure or holding free of incumbrances, and, if, in any case, the decree for rent either

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[1] *Tarini Prosad Roy* v. *Narayan Kumari Debi* [1889], I. L. R., 17 C. 301.
[2] *Moharanee Dasya* v. *Harendra Lall Roy* [1896], 1 C. W. N. 458.
[3] *Fais Rahman* v. *Ram Sukh Bajpai* [1893], I. L. R., 21 Cal. 169.

has not been, or cannot be, enforced by the sale of the tenure or holding, it cannot be enforced in any other way.

When landlord estopped from proceeding against defaulting tenure or holding.

The landlord is estopped from proceeding against the defaulting tenure or holding after it has passed into other hands by his own acts. Where the first defendant owned a *raiyati* holding, and the landlord chose to put it up to sale, and purchased it himself in execution of a money-decree, and afterwards settled it with the other defendants, he could not again proceed against it for arrears of rent due from the first defendant so as to give any title to the purchaser at a sale in execution of a decree for such arrears.[1] The remedy of such purchaser is only to obtain a refund of the purchase-money from the landlord.[1]

Occupancy-holdings not transferable by custom.

In connection with this matter, it must be borne in mind that, although, under the provisions of section 65, even such *raiyati* holdings as are not transferable by custom or local usage are liable to sale in execution of a decree for the rent thereof, which is declared to be a first charge thereon, yet such holdings are not saleable at the instance of the occupancy-*raiyat*, or of any creditor of his other than the landlord seeking to obtain satisfaction of his decree for arrears of rent.[2] The case, of course, is different when the holding is transferable by custom or local usage.

Ordinarily the only persons interested in impugning the validity of the transfer of an occupancy-holding are the occupancy-*raiyat* and the landlord, and, when the former transfers his holding, and the latter accepts the transferee in the place of the former tenant, there may arise no difficulty in the way of the transfer being given effect to. But that case is very different from the one[2] now before us, where the transfer has been effected by compulsory sale at the instance of the *raiyat's* creditor, and the landlord's recognition has been obtained years after the transfer, although, since the purchase, he had been receiving rent from the tenant.

It is submitted that the principle laid down here is stated in rather broad terms, and has to be qualified by the facts of the case.

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[1] *Ram Saran Poddar* v. *Mohammed Latif* [1898], 3 C. W. N. 62.

[2] *Bhiram Ali Shaik Shikdar* v. *Gopi Nath Shaha* [1897], I. L. R., 24 Cal. 355.

Meaning of "holding."

The word "holding" in this section means an entire parcel or parcels, and is not intended to include an undivided share in a parcel or parcels. A '*raiyati*' holding, which, from the definition of *holding* in section 3 (*9*), page 51, *ante*, and of '*raiyat*' in section 5, sub-section (*2*), page 81, *ante*, means a parcel of land held by a *raiyat* for the purpose of cultivation, can ordinarily be held only in its entirety, and the cultivation of an undivided fractional share of a parcel of land would ordinarily be meaningless.

Meaning of "tenure."

A 'tenure,' on the other hand, is the interest of a tenure-holder, who, as defined in section 5, sub-section (*1*), page 81, *ante*, is "a person who has acquired, from a proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents, or bringing it under cultivation by establishing tenants on it;" and a tenure, therefore, may relate only to an undivided fractional share in land without leading to any practical difficulty. And it is for this reason that, while tenure is defined in section 3, clause (*7*), page 51, *ante*, as "the interest of a tenure-holder or an under-tenure-holder," 'holding' is defined in section 3, clause (*9*), page 51, *ante*, not as the interest of a *raiyat*, but as "a parcel or parcels of land held by a *raiyat*, and forming the subject of a separate tenancy."[1]

Attachment of a tenure or holding by a fractional co-sharer not an attachment under s. 170.

The entire tenure or holding passes to the purchaser only when it is sold in execution of a decree for arrears of rent obtained by the sole landlord, or by the entire body of landlords. An attachment, therefore, of a tenure or holding in execution of a decree for rent obtained by a fractional co-sharer for arrears of his separate share was not such an attachment as is contemplated by section 170 of the Act[2] until section 148A was added to this Act in 1907, 1908:—

Section 170 of the Bengal Tenancy Act gives certain privileges to persons who have taken proceedings under that Act for the purpose of re-

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[1] *Hurry Churn Bose* v. *Rajah Runjit Singh* [1896], I. L R., 25 Cal. 917; S. C., 1 C. W N. 521.

[2] *Beni Madhub Roy* v. *Jaod Ali Sircar* [1890], I. L. R., 17 Cal. 390 (F. B.).

covering their rents; and section 188 says that, where several persons are joint landlords, and when anything under this Act is authorized to be done, they must all join in doing it. That shows, in our opinion, that, where landlords are seeking to take the benefit of this Act, they must act in concert; and, where one of the several co-sharers in a *zamindari* thinks fit to pursue his remedies to recover his share of the rent, he must pursue them under the ordinary law of the country, and independently of the Bengal Tenancy Act.[1]

This view has not, however, been followed by the Privy Council. It has recently been held[2] that a sharer whose co-sharers refuse to join him as plaintiffs can bring them into the suit as defendants, and sue for the whole rent of the tenure:

Section 188 of the Act does not preclude such a suit, the filing of a suit not being a thing which the landlord is, under the Act, "required or authorized to do," but an application to the Court against an alleged grievance which the plaintiff is entitled to submit, not by reason of any provision of the Tenancy Act, but under the general law.

A decree for rent obtained by some of the co-sharers in a zamindari—its effect.

Formerly a decree obtained for rent by some of the co-sharers in a *zamindari*, and not by the whole body of the *zamindars*, could not be regarded as a decree under the Bengal Tenancy Act.[3] In the Amending Acts I. of 1907 (Bengal) and I. of 1908 (E. B. Assam), this principle has been departed from. *See* sections 148A, 158B, 169 (*1*), proviso, and 188A, *post*.

If an occupancy-holding is not saleable according to custom or usage, it is not open to the co-sharer landlord (who could not be regarded in any other light as a mere creditor) to bring to sale the interest of the occupancy-*raiyat* in the holding, and the *raiyat* would be entitled to object to the application for delivery of possession, even after the confirmation of the sale, on the ground that it was illegal.[4] This dictum must be reconsidered in the light of sections 148A and 188A, *post*.

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[1] *Beni Madhub Roy* v. *Jaod Ali Sircar* [1890], I. L. R., 17 Cal. 390 (F. B.).

[2] *Pramoda Nath Roy* v. *Ramani Kanta Roy* [1907], I. L. R., 35 Cal. 331.

[3] *Durga Charan Mandal* v. *Kali Prosanna Sircar* [1899], I. L. R., 26 Cal. 727: S. C., 3 C. W. N. 586; *see* also *Prem Chand Nuskur* v. *Mokshada Debi* [1887], I. L. R., 14 Cal. 201; and *Jugobundhu Pattuck* v. *Jadu Ghose Alkushi* [1887], I. L. R., 15 Cal. 47.

[4] *Durga Charan Mandal* v. *Kali Prosanna Sircar* [1899], I. L. R., 26 Cal. 727: S. C., 3 C. W. N. 586.

Provisions of the old law.

Under the former Tenancy Act (Bengal Act VIII. of 1869), an occupancy-*raiyat* could be ejected from his holding in execution of a decree for arrears of rent due in respect of it. Sections 59 and 64 of the same Act made under-tenures, which were transferable by the title-deeds, or by the custom of the country, saleable in execution of decrees for arrears of rent due in respect of them; but section 64 expressly provided that, when such an under-tenure was sold in execution of a decree obtained by a fractional shareholder for money due to him on account of his share of the rent, it should be sold, not under the provisions of the Act, but under the ordinary procedure of the Court, and that the sale should have all the incidents attached to such a sale.

The present Act.

Section 65 of the present Tenancy Act prohibits ejectment for arrears in the case of a tenant who is a permanent tenure-holder, a *raiyat* holding at fixed rates, or an occupancy-*raiyat*, and enacts that 'his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.' Chapter XIV. contains provisions for the sale of tenures and holdings in execution of such decrees, and undoubtedly, we think, relates only to sales of the kind authorized by section 65. This section makes no distinction between transferable and non-transferable holdings and tenures, and the Act contains no special provisions for the sale of a tenure or holding in execution of a decree obtained by one of several joint landlords for money due to him in respect of his share of the rent of such tenure or holding. Section 188 enacts, however, that, when there are several joint landlords, they must all join in doing anything which, under the Act, a landlord is authorized or required to do. Reading this section, as we consider it must be read, in connection with section 65 and Chapter XIV., it follows that the sale authorized by section 65 is a sale of the tenure or holding at the instance of all the joint landlords in execution of decree obtained by them for the rent of it, and that the proceedings required to be taken under Chapter XIV. must similarly be proceedings taken by all of them. The Act does not, we think, contemplate or provide for the sale of a tenure or holding at the instance of one only of several joint landlords, who has obtained a decree for the share of the rent due to him.[1] Such a sale must, it seems, be under the provisions of the Civil Procedure Code, which, by section 143, are applicable to all suits under the Act except when declared inapplicable, and it would carry with it all the incidents attached to such a sale, and not the special incidents attaching to a sale under the Act.

This view of the law seems also consistent with the general scope and policy of the Tenancy Act, which is to make all the joint landlords act

[1] But *see* ss. 148A, 158B, 169 (*1*), prov., and s. 188A, *post*, introduced into this Act in 1907 and 1908.

together, and not to allow any one of them to act as if he was the sole landlord. The construction which the Subordinate Judge has put upon section 65 would lead to much litigation and many difficulties.[1]

The decree referred to in section 65, for the satisfaction of which an occupancy-holding can be brought to sale, is, we consider, a decree obtained by all the landlords, or at all events a decree obtained by some of the landlords for the entire rent in the presence of all, and not a decree obtained by one co-sharer for his share of the rent.[2]

Mode of selling holding to be sold in execution of a decree for a fractional shareholder's share of the rent.

Accordingly, when a holding, which was not transferable, and could not have been sold under the provisions of the Bengal Tenancy Act, is put up to sale in execution of a decree for a fractional shareholder's share of the rent, it is sold in the same way as any other property would be sold in the execution of a decree of a Civil Court; and, as the judgment-debtor to whom it belongs has no transferable right, the purchaser acquires nothing by his purchase.[2] The effect of the amendments made in 1907 and 1908 must not be left out of sight in considering these rulings.

Sale of tenure where plaintiffs formerly represented the entire body of the landlords, but latterly held fractional shares only.

In a suit[3] for rent for four years, it appeared that, for the first two years of the claim, the plaintiffs represented the entire body of the landlords, and that, for the last two years, they were only fractional landlords. The High Court held that the decree in such a case was not a rent-decree under the provisions of section 65 of the Bengal Tenancy Act, which presupposes that the decree should be in a suit in which all the landlord co-sharers are plaintiffs, and not merely some of them. The sale of a tenure in execution of a decree for rent obtained by certain persons who did not constitute the entire body of landlords at the date of the suit and of the decree, and who were not the entire body of landlords at the date at which part of the claim for which the rent-suit was

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[1] *Sadagur Sirkar* v. *Krishna Chandra Nath* [1899], I. L. R., 26, Cal. 937: S. C., 3 C. W. N. 742. But *see* foot-note 2 on p. 311, *ante*, and the case therein referred to.

[2] *Sheikh Jarip* v. *Ram Kumar De* [1899], 3 C. W. N. 747.

[3] *Shaikh Naimuddin* v. *Srimanta Ghose* [1901], 6 C. W. N. 124 (*per* BANERJI, J.).

brought accrued due, would not pass the entire tenure, but would merely pass the right, title, and interest of the judgment-debtors in the tenure at the date of the sale.[1] This no longer holds good.[2]

Transfer of the landlord's interest after rent hab decome due.

Where the rents had become due from the tenant whilst he held the tenure, and the landlord obtained a decree therefor after he (the landlord) had transferred the property to somebody else, such transfer would be no bar to the landlord enforcing his right against the tenure: "The relationship of landlord and tenant existed during the period for which rent was claimed; the rent was due to him as landlord; was decreed to him as such; and it was a charge on the tenure." It could not, therefore, be successfully contended that he could not have executed the decree under the provisions of the Tenancy Act by the sale of the tenure in respect of which it was obtained.[3]

Landlord entitled to first charge when lessee neglects to enforce it.

A *thikadar* brought a suit for the rent of a tenure more than two years after the expiration of his lease, and brought the tenure to sale more than five years after he had ceased to be in possession; and in the meantime the landlord had entered into possession of the tenure, and had obtained a decree for arrears of rent falling due after the termination of the lease: it was *held*[4] that there could not be two first charges standing simultaneously against the tenure; and that, under the circumstances, the only person entitled

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[1] *Shaikh Naimuddin* v. *Srimanta Ghose* [1901], 6 C. W. N. 124 (*per* BANERJI, *J*).

[2] *Mafizudin* v. *Asutosh Chuckerbutty* [1907], 14 C. W. N. 352, which referred to *Pramoda Nath* v. *Ramani Kanta* [1907], I. L. R., 35 Cal. 331 (P. C.), as authority for the proposition that a suit by a co-sharer for the *entire* rent, in which the other co-sharers are joined as *co defendants*, must be regarded as properly framed under the Bengal Tenancy Act.

[3] *Chatrapat Singh* v. *Gopi Chand Bothra* [1899], I L. R., 26 Cal. 750. In the case of *Hem Chunder Bhunjo* v *Monmohini Dassi* [1894], 3 C. W. N. 604 it was held that a landlord who, after having obtained a decree for arrears of rent against a saleable under-tenure, had lost his estate, could not bring the tenure itself to sale in execution of his decree; his right to sell the tenure existing so long as the relationship of landlord and tenant exists. The view therein expressed was based upon the special facts of the case, but this decision was overruled by a Full Bench in *Khetra Lal Sing* v. *Kritarthamayi Dasi* [1906], I. L. R., 33 Cal. 566, which affirmed the landlord's right to the remedy of section 65, provided he was the landlord when the decree was made. This was followed in *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal. 737.

[4] *Srimant Roy* v *Mahadeo Mahata* [1904], I. L. R., 31 Cal. 500; S. C., 8 C. W. N. 531.

to the first charge was the landlord in possession; also that, at the time of the sale under the *thikadar's* decree, the tenure was subject to the first charge existing in favour of the landlord for the rents which had fallen due after the termination of the lease.

The old law: remedy of the landlord for the enforcement of his decree.

Under the old law, the remedy of the landlord for the enforcement of his decree for arrears of rent was confined in the first instance to the tenure or holding itself, in case it was saleable.[1] And he was debarred from proceeding in execution against any other immoveable property of the tenant until he could show that his decree could not be satisfied by attaching the person and moveable property of the judgment-debtor. He could not, however, proceed against the person and property of the judgment-debtor simultaneously.

The present Act.

Decisions.

Section 65 of the present Act has been construed to mean that the landlord, in the case of a saleable tenure or holding, has a double remedy. In one case[2] it has been held that, since the passing of the Bengal Tenancy Act, 1885, a landlord who obtains a decree for rent is entitled, if he pleases, in the first instance, to attach the moveable property and the person of his judgment-debtor; and that he is not obliged in the first instance to endeavour to execute his decree by putting up for sale the tenure, the rent in respect of which is in arrear, and for which he has obtained a decree. And, *semble*, that the "charge" referred to in section 65 of the Act (*ante*, p. 305) is not such a "charge" as that defined in section 100 of the Transfer of Property Act (IV. of 1882).

In another case[3] it has been held that, under the present law, the landlord may bring a suit to enforce the statutory charge

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[1] *Deanatullah* v. *Nasar Ali Khan* [1868], 1 B. L. R. (A. C.) 206: S. C., 10 W. R. 341; *Jeki Lal* v. *Narsingh Narain Singh* [1865], 4 W. R. (Act X. Rulings) 5; *Hurish Chandra Rai* v. *The Collector of Jessore* [1877], I. L. R., 3 Cal. 712; *Lalit Mohun Roy* v. *Binodai Dabee* [1886], I. L. R., 14 Cal. 14.

[2] *Fotick Chunder Dey Sircar* v *Foley* [1887], I. L. R., 15 Cal. 492. *See* also appeal from Order No. 70 of 1887, decided by PETHERAM, *C. J.*, and GHOSE, *J.*, on the 30th May 1887, and S. A. 1896 of 1887, decided by WILSON and RAMPINI, *JJ.*, dated 31st July 1888.

[3] *Tarini Prosad Roy* v. *Narayan Kumari Debi* [1889], I. L. R., 17 Cal. 301.

against the tenure or holding, or may elect to proceed as an ordinary creditor. His decree would then be a mere personal decree, which he could enforce in the ordinary way. Chief Justice PETHERAM said in his judgment:—

This section, so far as I can see, creates a first charge upon the tenure for the rent of it, and puts the landlord in the position of a first mortgagee, so far as the rent is concerned; but the tenant remains personally liable for the rent. So that the landlord's position is this—he has a mortgage or charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt to him. That being the case, he has a right to avail himself of either of his remedies. He may, if he chooses, bring an action in which he claims to establish his lien upon the tenure to bring that tenure to sale, notwithstanding any other charge which may have been made upon it, and that whether the tenant had any other property, and whether some one else had a charge by way of contractual mortgage upon the tenure. But, if he thinks fit, he need not follow that course. He may bring an action to recover the debt the tenant owes him in the same way as he might if he were a mortgagee in a case where there was a personal covenant in the mortgage-deed, giving the go-by to the mortgage, and getting a personal decree against the debtor for the payment of the money. Having elected that course, he appears to be in the position of an ordinary creditor, able to realize his debt by the ordinary forms of attachment and sale of any property which the debtor has, subject to any charge which other persons may have upon it. In this particular case the decree is, on the face of it, only a money-decree for the payment of the money, and, in my opinion, may be enforced in any of the modes in which an ordinary money-decree may be enforced, either against the person of the debtor or any property of his that may be found.[1]

Consideration of the views expressed by the Courts.

The view as to the two different remedies of the landlord proceeds upon the difference in the form of the actions. But it is respectfully submitted that there is no warrant in the provisions of the law for holding that a difference in the form of the actions would alter the rights of the landlord relating to the enforcement of his decree for arrears of rent. If the suit is for rent, and the decree is for rent, the absence of a declara-

[1] *Tarini Prosad Roy* v. *Narayan Kumari Debi* [1889], I. L. R., 17 Cal. 301.

tion in the ordering part of the decree that the decretal amount is a charge on the tenure or holding would not, it is submitted, alter the character of the decree, the effect of which, under the law, is to make the rent a first charge on the tenure or holding in respect of which the arrears are claimed.

In a recent case[1] it has again been affirmed that the holder of a decree for rent has a right to ask for personal execution against the judgment-debtor notwithstanding that he has also a right to bring the tenure to sale for the arrears.

Decrees for arrears of rent against a Hindu widow.

Decrees for arrears of rent obtained against a Hindu widow, and put into execution after her death, cannot be regarded as other than personal debts, payment of which can be enforced only against the property left by the widow, and not against her father's estate, in which she had only a life-interest, and which passed upon her death to the next heirs.[2]

When a holding is mortgaged to the landlord, he cannot sell it subject to his mortgage.

When a landlord has taken a mortgage of a tenant's holding, he cannot bring it to sale subject to his mortgage.[3]

A decree for arrears of rent obtained by the raiyat against his under-tenant is liable to attachment at the instance of the landlord.

Under the head of moveable property, which a landlord is at liberty to proceed against in execution of a decree for arrears of rent, is apparently included his tenant's right to recover rent under a decree from an under-tenant.[4]

What is not liable to attachment in the case of an agriculturist.

Where the judgment-debtor is an agriculturist, his implements of husbandry, and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, are, by section 60 [*proviso* (*b*)] of the new Code of Civil Procedure (Act V., 1908), exempt from attachment and sale in execution of the decree; but the materials of his houses and other buildings belonging to and occupied by an agriculturist, though exempt from attachment or sale in execution of ordinary decrees [clause (*c*) of the proviso to section 60 of the said

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[1] *Bhabani Charan Dutt* v. *Pratap Chandra Ghosh* [1904], 8 C. W. N. 575.

[2] *Krishna Govinda Mozumdar* v. *Hem Chandra Chowdhri* [1889], I. L. R., 16 Cal. 511.

[3] *Rai Ramani Dasi* v. *Surendra Nath Dutt* [1896], 1 C. W. N. 80.

[4] *Mohesh Chandra Chatterji* v. *Guru Prosad Rai* [1870], 13 W. R. 401.

Code], are yet liable to be attached and sold in execution of decrees for arrears of rent.[1]

Decree for arrears against one only of several joint enants.

Where one of several joint tenants executed a *kabuliyat* in favour of the landlord, and the other tenants acquiesced in the representation of the first-mentioned tenant that the holding was his, and the landlord sued that tenant only for the rent, and, in execution of his decree, attached the entire holding, and the other tenants had made no attempt to get themselves recognized, or to pay the arrears of rent, it was *held*[2] that the attachment covered the entire holding, there being no evidence of fraud or collusion on the part of the landlord.

"Rent" includes road-cess payable to the landlord.

The word "rent" in this section includes road-cess payable to the landlord by the tenant [*see* section 3 (*5*), p. 51, *ante*], and therefore, where a tenure is sold in execution of a decree for road-cess, the purchaser acquires it free of any incumbrance created by the former tenant unless it is a registered and notified incumbrance within the meaning of section 161, *post*.[3]

An amount due for cesses is only a personal debt, and cannot be recovered under the Public Demands Recovery Act from the property on which it is assessed, when such property belongs to a third person, although such person is not the recorded proprietor.[4]

Interest.

Interest on arrears of rent is not rent as defined in section 3 (*5*), p. 51, *ante;* and so would not, apart from the rent, seem to be a first charge on a tenure or holding under the provisions of section 65 (*ante*, p. 305). *See* notes on sections 161 and 169 (*c*), *post*. 'Rent' now includes interest and damages for the purposes of Chapter XIV.

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[1] *Maniklal Venilal* v. *Lakha* [1880], I. L. R., 4 Bom. 429; and *Radha Krishna Hakamji* v. *Balvant Ramji* [1883], I. L. R., 7 Bom. 530.

[2] *Rajani Kant Guha* v. *Usir Bibi* [1902], 7 C. W. N. 170.

[3] *Nobin Chand Naskar* v. *Bansinath Paramanik* [1894], I. L. R., 21 Cal. 722.

[4] *Shekaat Hussain* v. *Sasi Kar* [1892], I. L. R., 19 Cal. 783.

Ejectment for arrears in other cases.

66. (*1*) When an arrear of rent remains due from a tenant, not being a permanent tenure-holder, a *raiyat* holding at fixed rates, or an occupancy-*raiyat*, at the end of the Bengali year where that year prevails, or at the end of the month of *Jeyt* where the *Fasli* or *Amli* year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled, by the terms of any contract, to eject the tenant for arrears or not, institute a suit to eject the tenant.

(*2*) In a suit for ejectment for an arrear of rent, a decree passed in favour of the plaintiff shall specify the amount of the arrear, and of the interest (if any) due thereon; and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(*3*) The Court may, for special reasons, extend the period of fifteen days mentioned in this section.

Extended to Orissa (September, 1891).

References.

Cf. sections 22 and 52 of Bengal Act VIII. of 1869 and sections 89 and 156, *post.*

Principle.

Section 66 of the present Act gives to the landlord the right of instituting a suit to eject the tenant of *agricultural lands* not belonging to the classes mentioned in the previous section, when an arrear of rent remains due from him at the end of the Bengali year where that year prevails, or at the end of *Jeyt* where the *Fasli* or *Amli* year prevails.[1]

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[1] The *Fasli* year prevails in Behar, while the *Amli* is in vogue in the Chittagong and Tipperah Districts.

A *raiyat* cannot be ejected under section 66 for an instalment which falls due in the middle of the year. Where a suit is brought before the expiry of the Bengali year, in respect of the arrears of rent for that year, the landlord is not entitled to eject the tenant under the section.[1]

Receipt of rent subsequent to decree for ejectment.

Receipt of rent subsequent to decree for ejectment, from the tenant against whom the decree was passed, was held[2] under the old law to render the execution of the decree impossible. The same principle would apply under the present Act.

It is the realisation of rent which debars the landlord from suing to eject.

The mere fact, that the landlord has obtained a decree for the arrears of rent, would not debar him from bringing a suit to eject; but, when once the arrears have been realized, the right to eject comes to an end. Under Bengal Act VIII. of 1869, it was held[3] that a landlord, who sues for arrears of rent for the whole of one year and a portion of the next, and also for ejectment, is not entitled to a decree for the latter:—

The right that is given to the landlord is this, namely, that, if any arrears are due at the end of the year, the tenant is liable to be ejected for non-payment of rent for that year—that is, the landlord has a right to put an end to the tenency. And the mode of enforcing those rights in the class of cases mentioned in the proviso is given in section 52 of the Act.[4] But forfeiture or determination of tenancy takes place when the tenant defaults to pay the rents due at the end of the year. If the landlord still treats the defaulter as his tenant, the right he has acquired under section 22 [of Bengal Act VIII. of 1869] must be taken to have been waived. The act of the landlord suing for the rent of the succeeding year would have the effect of an admission that the defendant's possession in that year is that of a tenant. Take the case of a tenant not having a right of occupancy. Under section 22 he is liable to be ejected from his holding without having recourse to any proceeding in a Court of Justice. But, if the landlord brings a suit for arrears of rent for the succeeding year against the

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[1] *Guru Dass Shut* v. *Nund Kishore Pal* [1898], I. L. R., 26 Cal. 199. *See* also *Sreeram Biswas* v. *Juggernath Dass Mohunt* [1866], 1 Ind. Jur. 187: S. C., 5 W. R. (Act X. Rulings) 45, decided under the old Act.

[2] *Nobo Krishna Mookerji* v. *Hurish Chunder Banerji* [1867], 7 W. R. 142; *Savi* v. *Mohesh Chunder Basu* [1864], W. R., Sp. No., 1864 (Act X. Rulings), 29.

[3] *Jageshuri Chowdhrani* v. *Mohammed Ebrahim* [1886], I. L. R., 14 Cal. 33.

[4] *I. e.*, Bengal Act VIII. of 1869.

tenant before ejecting him, he cannot afterwards eject him in the middle of the year; because, by bringing a suit against him for rent for the next year, the landlord admits his tenancy.[1]

It is clear from the language of section 66 that, in order to maintain an action for ejectment, the person bringing the suit must be the landlord at the time. Where a landlord parts with his interest after obtaining a decree for ejectment, the decree cannot be put into execution by his transferee.[2] But decrees (which are not ejectment-decrees) can be executed by a former landlord even after he has parted with his interest as a landlord, with the advantages of section 65 of this Act. When arrears of rent have been assigned to a third party, they are no more than civil debts: the assignor is no longer the landlord; and the tenant cannot be ejected under this section for non-payment.[3]

In order to maintain a suit for ejectment, the plaintiff must be the landlord at the time of the institution.

When a rent-decree is obtained by a landlord, and afterwards assigned to a third party, the assignee cannot execute the decree unless the landlord's interest has been vested in him [section 148, clause (*h*), *post*[4]].

Under Bengal Act VIII. of 1869, a suit in ejectment was held[5] to lie for arrears of *bhaoli* or produce-rent. And the present law does not appear to make a variation in that rule.

Suit in ejectment for arrears of "bhaoli" rent.

The law does not require, as in a decree for foreclosure or sale in a suit on a mortgage, that the decree shall specify the date on which the decree shall become absolute in regard to foreclosure or sale, and an order making it absolute. It merely requires that certain items shall be specified in it, and the object of this is to give information to the debtor so that he may make the necessary payment, and thus avoid the ejectment; and the law then proceeds to declare that the decree shall not be executed if the amount so specified and the costs of the suit are paid into Court

What should be specified in a decree for arrears of rent.

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[1] *Jugeshuri Chowdhrani* v. *Mohammed Ebrahim* [1886], I. L. R., 14 Cal. 33.

[2] *Hem Chandra Bhunjo* v. *Monmohini Dassi* [1899], 3 C. W. N. 604. But see *Chatrapat Sing* v. *Gopi Chand* [1899], I. L. R., 26 Cal. 757 (760), and *Khetra Pal* v. *Kritarthamayi Dasi* [1906], I. L. R., 33 Cal. 566, for a contrary view. No question of ejectment appears to have been raised in the later cases.

[3] *Chutterput Sing* v. *Haji Mirza Mohammed Golostana*, Appeal from Original Decree No. 362 of 1895, *per* O'KINEALY and RAMPINI, JJ.—15th February 1898.

[4] *Dinonath Dey* v. *Golap Mohini Dassi* [1896], 1 C.W. N. 183.

[5] *Kishen Gopaul Mawar* v. *Barnes* [1877], I. L. R., 2 Cal. 374.

within fifteen days from the date of the decree, or, where the Court is closed on the fifteenth day, on the day on which the Court re-opens. That seems to be a direction to the Court of execution rather than to require a Court in passing a decree for ejectment to state these terms in its decree; and it is also a notice to the debtor how he may avoid the operation of the decree against him. Notwithstanding any order under sub-section (*3*), the decree would remain unaffected in its terms. The object of the application is only to obtain suspension of its execution so as to extend to the debtor further time to satisfy the demand of the landlord decree-holder.[1]

Extension of time for payment of decree can be granted by the Court of execution.

The extension of time authorized by sub-section (*3*) can be granted by the Court, not only when framing the decree, but also after decree. It would follow, therefore, that, when the decree is being executed by a Court which has not made the decree, the extension can also be granted by the Court of execution; and such extension may be obtained by the judgment-debtor upon a mere petition, and not upon an application for review of judgment.[1]

A decree for ejectment passed under section 66, sub-section (*2*), need not incorporate the terms as to the ejectment being avoided by payment within fifteen days from the date of the decree. These terms are rather in the nature of a direction to the Court of execution.[1]

The fifteen days' grace must be counted from the final decree.

The fifteen days' grace allowed to a tenant prior to ejectment cannot be negatived by any condition in his lease.[2] And it must be counted from the date of the final decree in the case. Where, therefore, a decree was made providing that, on failure of the defendant tenant to pay the amount due under the decree within fifteen days, his lease should be cancelled, and an appeal was preferred from this decree, which was dismissed, payment by the defendant within fifteen days from the date of the appellate decree was held[3] to disentitle the landlord from seeking for the cancellation of the lease.

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[1] *Bodh Narain* v. *Mohammed Moosa* [1899], I. L. R., 26 Cal. 639: S. C., 3 C. W. N. 628.

[2] *Madhub Chandra Adit* v. *Ram Kaloo* [1871], 16 W. R. 151; *Jan Ali Chowdhry* v. *Netyanund Bose* [1868], 10 W. R. (F. B.) 12; *Duli Chand* v. *Rajkisore* [1882], I. L. R., 9 Cal. 88.

[3] *Nam Narain Singh* v. *Lala Roghunath Sahai* [1895], I. L. R., 22 Cal. 467.

Where no sufficient steps were taken to execute the decree of the Court of first instance for the ejectment of the defendant from the property, and an appeal was preferred, the words "date of the decree" must be read to mean the final decree, which was the decree of the Appellate Court. And, although the Court did not specify in so many words that the defendant should have fifteen days' time from the date of its decree, still it must be presumed to have incorporated the terms of the original decree.[1] These views were expressed in a case under section 58 of Bengal Act I. of 1879 (the Chota Nagpur Landlord and Tenant Procedure Act), but the principles laid down are equally applicable to cases arising under section 66 of this Act (p. 319, *supra*).

Where, however, only an ineffectual attempt had been made by the Court of first instance to modify a decree in review, which was pronounced illegal, it was held[2] that the fifteen days were to to be reckoned from the only decree in the case, *i. e.*, the orignal decree of the Munsif.

The old law as to the date of payment.

In the old law, there was no such provision as is contained in the last part of sub-section (2); but it had been held[3] that, if the Court was closed on or before the last day of the fifteen days, the decretal amount could be paid in on the first day the Court re-opened. This view has been incorporated into the present section.

The present law.

Compliance with the decree.

Under the old law, it has been held[4] that payment into Court within the fifteen days, with a protest as to a sum improperly charged as interest, is a sufficient payment to protect from ejectment. Where a decree directs the payment of money into Court within a limited term, it would be a sufficient compliance with the decree if the judgment-debtor bring the money into Court within that time, and diligently take the necessary steps

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[1] *Ram Narain Singh* v. *Lala Roghunath Sahai* [1895], I. L. R., 22 Cal. 467; *see* also *Abdar Rahman* v. *Digambery Dasi* [1872], 18 W. R. 477; and *Noor Ali Chowdhuri* v. *Koni Meah* [1886], I. L. R., 13 Cal. 13.

[2] *Poresh Nath Ghosh* v. *Krishna Lal Datta* [1874], 23 W. R. 50.

[3] *Hussain Ali* v. *Donselle* [1880], I. L. R., 5 Cal. 906. *See* also s. 10 of Act X. of 1897.

[4] *Sristidhur Dey* v. *Durga Narain Nag* [1872], 17 W. R. 462.

required by the departmental rules for its actual payment into the treasury.[1]

Rent need not be paid by the tenant himself.

Under the old law, it was held[2] that it was not necessary that the rent should be paid by the tenant himself; a payment by his transferee, or by any other party interested in saving a forfeiture of the tenure, was held sufficient. Nor is there any provision in the present law debarring any person other than the tenant from making the payment on behalf of the tenant.

Interest on arrears—Bengal Act I., 1907; E. B. Assam Act I., 1908.

67. An arrear of rent shall bear simple interest at the rate of twelve [and a half] *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due to the [date of payment or of the institution of the suit, whichever date is earlier].

The words in brackets were inserted by Acts I. of 1907 (Bengal) and I. of 1908 (E. B. & Assam).

References.

Section 67 must be read with section 68, section 161 (*c*), and clause (*h*) of sub-section (*3*) of section 178, *post*.

Alteration made by this Act.

Section 67 has made a material alteration in the old law relating to the liability of tenants to pay interest on arrears of rent.

Bengal Act VIII. of 1869.

Section 21 of Bengal Act VIII. of 1869 declared that, "unless otherwise provided by written agreement," an instalment of rent "shall be liable to interest at twelve *per centum per annum*."

Under the present law, no contract for a higher or lower rate of interest will be recognized.

Under the present law, no contract for a higher or lower rate of interest will be recognized; nor is it in the discretion of the Courts to give a lower rate of interest than that fixed by section 67. But, when damages are awarded under section 68, interest cannot be awarded. The law does not recognize the lawfulness of compound interest, which is not recoverable even if there is a contract to that effect.

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[1] *Gujadhur Pauree* v. *Naik Pauree* [1882], I. L. R., 8 Cal. 528.

[2] *Saroda Prosad Roy Chowdhury* v. *Nobin Chunder Dutt* [1863], 1 Marsh. 417.

Under the old law, it was held[1] that, when a decree for rent at an enhanced rate was obtained, interest ran on the arrears at that rate from the date on which they became due. And mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent does not amount to a waiver of such right.[2] This view appears to have been approved of and followed in a case[3] arising under the present Act.

Interest on arrears of rent-decree at an enhanced rate.

All arrears of agricultural rents payable quarterly will have interest calculated quarterly running from the expiration of the quarter in which the instalment of rent fell due. But, where rent is payable monthly, it has been held[4] that interest should be calculated monthly; and that the provision in section 67 of the Act only applies to cases wherein the rent is payable quarterly.

How interest to be calculated.

Considering the provisions of sections 53 and 54 (*3*), it seems that interest cannot be given if the rent is payable in kind.[5] But damages may be awarded for the money equivalent.[6]

Produce-rents.

Section 178, sub-section (*3*), clause (*h*), *post*, declares that nothing in any contract made between a landlord and a tenant after the passing[7] of this Act (Act VIII. of 1885) shall affect the provisions of section 67 relating to interest payable on arrears of rent. A condition, therefore, in a lease executed after the Act came into force, for the payment of interest at a higher rate than twelve-and-a-half per cent. would not be enforceable. Neither landlord nor tenant can, after the passing

Section 178, sub-section (3), cl (h).

A condition in a lease for payment of higher interest not enforceable under the present Act.

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[1] *Ahsanullah* v. *Aftabuddin Mohammed* [1878], 3 C. L. R. 382. But see *Ghulam Ali* v. *Gopal Lall Tagore* [1864], 1 W. R. 56; *Samira Khatun* v. *Gopal Loll Tagore* [1864], 1 W. R. 58; *Raj Mohan Neogi* v. *Anand Chander Chowdhuri* [1868], 10 W. R. 166.

[2] *Johoory Lal* v. *Bullub Lal* [1879], I. L. R., 5 Cal. 102: S. C., 4 C. L. R. 349; *Ratikanto Basu* v. *Gungadhur Biswas* [1862], W. R, F. B., 13.

[3] *Shyama Churn Mandal* v. *Heras Mulla* [1898], I. L. R., 26 Cal. 160.

[4] *Hemanto Kumari Debi* v. *Jogadindra Nath Roy* [1894], I. L. R., 22 Cal. 214 (221). Explained in I. L. R., 33 Cal. 683 [1906]. See foo'note (1) on next page.

[5] *Kishen Gopal Mawar* v. *Barnes* [1877], I. L. R., 2 Cal. 374.

[6] *Apurba Krishna Roy* v. *Asutosh Dutta* [1904], 9 C. W. N. 122.

[7] *Viz.*, the 14th of March 1885.

of the Act on March 14th, 1885, contract himself out of the provisions of section 67. The rate was fixed at 12½ *per cent.* in 1907, 1908.

Section 178 (*3*), clause (*h*), of the Bengal Tenancy Act, is applicable to a contract entered into after the passing of the Act, namely, the 14th March 1885, and the parties would not be competent to contract themselves out of the provision in section 67, which limits the interest to simple interest at 12 *per cent. per annum* by the device of making the rent payable otherwise than quarterly, and such a contract would not be enforceable in so far as it may provide for payment of interest at a rate higher than 12 *per cent.*[1]

Stipulation made before the passing of the Act.

Where a tenant had agreed to pay a higher rate of interest by a *kabuliyat* executed before the passing of the Act, the term of which had expired after the passing of the Act, and he had held over without any further agreement, and the landlord had obtained a decree for arrears of rent, and, in execution, the holding was sold and purchased by the defendant—in a suit brought by the landlord, interest was claimed at the rate and according to instalments specified in the *kabuliyat*, and it was held[2] as follows:—

We will assume, in the absence of anything to denote the contrary, that the original holder, while holding over, held under all the terms of the *kabuliyat* which he had given. When, however, the landlord put up the holding to sale for its arrears, he must be taken to have put it up subject to all the ordinary incidents of such a holding. It was not an ordinary incident that interest on arrears should be payable at the very high rate claimed. On the contrary, there was no such incident; and, if the landlord had put up the holding subject to an express condition that the higher rate should be paid, the condition would not bind the purchaser in so far as it purported to create a new contract between himself and the landlord. If there was no such condition attached to the sale, the purchaser must be taken to have purchased subject to all the

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[1] *Narendra Kumar Ghose* v. *Gora Chand Poddar* [1906], I. L. R., 33 Cal. 683 (*Hemanta Kumari Debi* v. *Jagadindra Nath Roy* [1894], I. L. R., 22 Cal. 214, explained).

[2] *Alim* v. *Satis Chundra Chaturdhurin* [1896], I. L. R., 24 Cal. 37.

ordinary incidents of the holding. If there was such a condition, and it was for the respondent to show it, which he has not done, the condition was, we consider, contrary to the provisions of the Act, and not binding on the purchaser. An agreement by a tenant of a holding for a term, to pay interest at a certain rate, may, if made before the passing of the Act, bind him so long as he continues to hold, but it does not attach to the land when the term has expired, and the holding by the act of the landlord passes into other hands; and if the landlord, after the expiry of the term, puts up the holding to sale under the Act, he puts it up subject to the express provisions of the Act in connection with it.

A condition to pay interest at a certain rate does not attach to the land.

The same view was taken in a subsequent case,[1] which arose under somewhat similar circumstances. One Ratan Mandal had taken from the landlord in the year 1880 a settlement of a *raiyati* holding, and executed in his favour a registered *kabuliyat* by which he agreed to pay interest at the rate of 225 per cent. per annum on his failure to pay rent according to the instalments. Ratan Mandal having allowed the rent to fall into arrear, a suit was brought against him, and a decree obtained. In execution of such decree, the holding was sold and purchased by the defendant. In a suit by the landlord, interest was claimed at the rate specified in Ratan Mandal's *kabuliyat*. It was held that the stipulation for payment of interest upon arrears of rent is an ordinary incident of a tenancy in this country unless there is something unusual in the stipulation, and that, as a rule, it would attach to the tenancy, not merely so long as it remains in the possession of the tenant who enters into the stipulation, but would continue to attach to it notwithstanding a sale for arrears of rent. But, though that is so, if there is anything unusual in the stipulation, it would not be an ordinary incident of a tenancy, and would not continue to be attached to the tenancy, after a sale for arrears of rent.

An unusual stipulation not an ordinary incident of a tenancy.

At first sight, this would appear to be somewhat in conflict with the view expressed in another case[2] decided by the Calcutta

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[1] *Kali Nath Sen* v. *Trailokhya Nath Roy* [1899], I. L. R., 26 Cal. 315. This case was distinguished in *Lal Gopal* v. *Manmatha Nath* [1905], I. L. R., 32 Cal. 258 (*see* note 3 at the foot on p. 328 next following).

[2] *Kishori Lall Dey* v. *The Administrator-General of Bengal* [1898], 2 C. W. N. 303.

High Court. In this case a tenant had, by a *kabuliyat* executed before the passing of the Act for a term which expired before the Act came into force, agreed to pay interest at the rate of 75 per cent. per annum, and had held over on the expiry of the term of his lease. In a suit for arrears accruing due after the Act came into force, it was *held* that he was liable to pay interest at the rate specified in the *kabuliyat* on the ground that he was to be taken as holding over on the same conditions as those set out in this *kabuliyat*, and that, if any contract between him and his landlord was to be implied, it must be taken to have been entered into so soon as the lease expired rather than at the beginning of each year. The *ratio decidendi* has been questioned in two subsequent cases,[1] where the Courts distinctly held that a tenant holding over after the expiration of his lease after the passing of the Act was liable to pay interest on arrears only at 12 per cent. per annum as provided in section 67 (now allowing 12½ per cent.).

Stipulation for interest an ordinary incident of a tenancy.

In a more recent case,[2] it has been held that a stipulation for payment of interest upon arrears of rent is an ordinary incident of a tenancy in this country unless there is something unusual in the stipulation; and that, as a rule, such a stipulation attaches to the tenancy with the result that a purchaser of the tenancy would be bound by the stipulation.

This view was followed in a later case,[3] in which the previous cases were considered when *A* purchased, at an auction-sale in execution of a rent-decree, a tenure covered by a *kabuliyat*, which stipulated for interest at a specified rate. The Full Bench *held* "that the tenure being subsisting, *A* bought the tenure subject to the terms and conditions of the lease, and was liable for interest

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[1] *Ali Mamud Pramanick* v. *Bhagabati Debya* [1898], 2 C. W. N. 525; *Administrator-General of Bengal* v. *Asraf Ali* [1900], I. L. R., 28 Cal. 227.

[2] *Raj Narain Mitra* v. *Panna Chand* [1900], 7 C. W. N. 203.

[3] *Lal Gopal Dutt Chowdhry* v. *Manmatha Nath Dutt Chowdhry* [1905], I. L. R., 32 Cal. 258 (*Kali Nath Sen* v. *Trailokhya Nath Roy* [1899], I. L. R., 26 Cal. 315, distinguished—*see* footnote 1 at p. 327 last preceding).

at the rate mentioned in the *kabuliyat*, and not at the rate mentioned in section 67 of the Bengal Tenancy Act."

In this case, the term of the lease had not expired: the purchaser was one of the landlords, and the sale took place subject explicitly to the existing *kabuliyat*.

The same points were considered in a later case,[1] in which the facts were as follow:—

In a previous suit for rent against a permanent tenure-holder holding at a fixed rent in a permanently-settled area, it had been *held*, following a rule of the High Court,[2] that the plaintiff could not recover interest on the arrears only at the rate of 12 *per cent. per annum*, as section 67 of the Bengal Tenancy Act controlled section 179 of the Act, and was a bar to his recovering at the higher rate mentioned in the *kabuliyat*.

The ruling referred to was subsequently overruled[3] by a Full Bench. In a subsequent suit between the same parties on the same *kabuliyat* for rent for a subsequent period, it was *held*[1] that the case must be decided upon the law as it stood when judgment was pronounced, and that the plaintiff could recover the larger sum for interest; the decision in the previous suit would not be *res judicata*. The subsequent suit having been brought on a fresh cause of action, no question as to the construction of the *kabuliyat* had arisen, and the law, since the decision of the former suit, had been determined by judicial decision to be otherwise than what it was formerly regarded to be. A point of law may constitute *res judicata*.

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[1] *Alimunnissa Choudhurani* v. *Shama Charan Roy* [1905], I. L. R., 32 Cal. 749, in which *Parthasaradi Ayyangar* v. *Chinna Krishna Ayyangar* [1882], I. L. R., 5 Mad. 304; *Chamanlal* v. *Bapubhai* [1897], I. L. R., 22 Bom. 669; *Venku* v. *Mahalinga* [1888], I. L. R., 11 Mad. 391; *Rai Churn Ghose* v. *Kumad Mohan Dutta Chowdhuri* [1897], 1 C. W. N. 687; and *Bishnu Priya Choudhurani* v. *Bhaba Sundari Debya* [1900], I. L. R., 28 Cal. 318, were referred to, and *Gowri Koer* v *Audh Koer* [1884], I. L. R., 10 Cal. 1087, and *Phundo* v. *Jangi Nath* [1893], I. L. R., 15 All. 327, distinguished.

[2] *Basanta Kumar* v. *Promotha Nath* [1898], I. L. R., 26 Cal. 130.

[3] *Matangini Debi* v. *Mokrura Bibi* [1901], I. L. R., 29 Cal. 674.

This ruling relates to fixed-rent tenures, and not to occupancy-holdings, to which section 179, *infra*, has no application. It applies only to tenures, of which the rent is fixed in perpetuity, in a permanently-settled area.

The provisions of section 178 (h) controlled by section 179.

The provisions of section 178, sub-section (*3*), clause (*h*), are controlled by section 179: accordingly a permanent lease granted by a permanent tenure-holder is not affected by the restriction contained in that clause. Consequently the proprietor or a holder of a permanent tenure in a permanently-settled area may make any condition as to interest.[1]

Interest payable when tender of rent refused if no deposit made.

Where rent was tendered to the plaintiff's *am-mukhtear*, but the plaintiff refused to accept it, it was *held*[2] that the defendant was liable to pay interest on arrears in spite of such tender, because he omitted to take advantage of the procedure provided by section 61 for the deposit of rent in Court. But this has been overruled[3] by a Full Bench (1908). A valid tender improperly refused is not an 'arrear of rent' within the meaning of sections 54 (*3*) and 67, and such a tender when kept alive stops the running of interest, even if no deposit under section 61 is made.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as it thinks fit:

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[1] *Atulia Charan Basu* v. *Tulsi Dass Sarkar* [1898], 2 C. W. N. 543 and *Matungini Debi* v *Makrura Bibi* [1901], 5 C. W. N 438, F. B. (AMEER ALI, J., dissenting), in which the majority overruled the decision in *Basanta Comar Rai* v. *Promotho Nath Bhattacharjee* [1898], I. L. R., 26 Cal. 130: S. C., 3 C. W. N. 36.

[2] *Ransgit Singha* v. *Bhagabutty Charan Roy* [1900], 7 C. W. N. 720.

[3] *Kripa Sindhu Mukherji* v *Ananda Sundari Debi* [1908], I. L. R., 35 Cal. 34-60 (*Jagat Tarini* v. *Naba Gopal* [1907], I. L. R., 34 Cal. 305, approved of).

Provided that interest shall not be decreed when damages are awarded under this section.

(*2*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

Extended to Orissa (September, 1891).

Cf. sections 44 and 45 of Bengal Act VIII. of 1869, and also section 3, clause (*5*), page 51, *ante*. **References.**

Under the old law, tenants were liable in damages for neglect to pay road and public works cesses.[1] And since, under the present Act, "'rent' means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by" him [section 3, clause (*5*), page 51, *ante*], default in the payment of road and public works cess will come within the meaning of section 68.[2] **Cesses.**

Under the old law, it was held[3] that the power to award damages on arrears of rent was within the discretion of the Court; and that, before awarding damages, it must, in the exercise of its discretion, look to the condition of the parties, and the particular hardship inflicted on the landlord by the omission of the tenant to pay his rent before calling "into action the penal terms of the section;"[4] and that damages were awardable only when the Court specially finds that the defendant had, without reasonable or probable cause, neglected or refused to pay the **Discretional with Court to award damages.**

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[1] *Saroda Prosad Gangooly* v. *Prosunno Coomar Sandial* [1882], I. L. R., 8 Cal. 290

[2] *Watson* v. *Sree Kristo Bhumik* [1893], I. L. R., 21 Cal. 132.

[3] *Jumroodan nissa Khanum* v. *C. Phillipe* [1864], 1 W. R. 290.

[4] *Baboo Ram Bodhun Singh* v. *Ranee Sree Koonwar* [1864], W. R., Sp. No. (Act X. Rulings), 22.

amount due by him.[1] The mere pendency of an enhancement-suit could not of itself be regarded as an excuse for withholding payment of what is admittedly due.

Under the present Act, also, it is discretionary with the Court to award damages; and, in exercising its discretion, it has to consider whether the defendant has, "without reasonable or probable cause, neglected or refused to pay the amount of rent due by him," and whether the plaintiff has instituted the suit without reasonable or probable cause.

No appeal.

As it is discretionary with the Court to award damages, its refusal cannot be a ground of appeal under section 100 of the Code of Civil Procedure (Act V. of 1908), although its award is.[2]

No interest when damages awarded.

By the proviso to sub-section (*1*), interest is not to be decreed when damages are awarded. The damages represent the sum which the plaintiff is allowed in lieu of interest up to the date of suit; and their award does not interfere with the interest which, under section 68, may be allowed subsequently to that date, and would certainly not prevent the Court from allowing interest from the date of decree.

Limitation.

The period of limitation in suits for arrears of rent is three years from the last day of the agricultural year in which the arrear fell due [*see* Sch. III., Art. 2 (*b*), *post*]. Applications for execution of decrees made under this Act, if for sums not exceeding Rs. 500, are barred if not presented within three years of the date of the final decree (*Ib.*, Art. 6).

Produce-rents.

Order for appraising or dividing produce.

69. (*1*) Where rent is taken by appraisement or division of the produce,—

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[1] *Nobo Kant Dey* v *Raja Baroda Kant Roy* [1864], 1 W. R. 100.

[2] *Gopal Lall Thakur* v. *Mohammed Kadir* [1864], W. R., Sp. No. (Act X. Rulings), 73.

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value, or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(*2*) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(*3*) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected; [but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.][1] Ben. Act I., 1907; E. B. Assam Act I., 1908.

[(*4*) Every officer appointed by the Collector under sub-section (*1*) to appraise or divide the produce shall, for the purposes of the Indian Penal Code,[2] be deemed to be a public servant.] Ditto.

Extended to Orissa (Septemper, 1891).

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[1] These words in square brackets have been added to sub-s. (*3*) both by Ben. Act I. of 1907 and E. B. & Assam Act I. of 1908, the only difference in the addition being the words "a Civil Court" as added by the latter instead of the words "the Court" as added above by the former.—*See* s. 16 (*1*) of each of the Acts.

[2] Act XLV. of 1860.

Produce-rents.

The system of payment of rent in kind prevails, chiefly in the South Gangetic districts of the Patna Commissionership (*i. e.*, Patna, Gaya, and Shahabad), and to a lesser extent in the Monghyr and Bhagalpore Districts of the Bhagalpore Division. There are two broadly-different prevailing methods in these districts: Under one (the *Agorabutta*) the crop is divided, and the landlord's share, which is generally one half, is made over to him in kind; under the other (the *bhaoli* or *danabandi*) the value of the crop is appraised, and the price of the landlord's share is paid to him in money. For a description of these, *see* Appendix IV. to this work, *post.*

The system was reported to be attended in Behar by grave abuses, which sections 69 to 71 were intended to remedy. The sections have not, however, been made use of to any great extent.

Officers vested with powers under sections 69 to 71.

All officers in charge of sub-divisions have been vested with the powers of a Collector for the purpose of discharging the functions referred to in sections 69 to 71.[1] The Deputy Collector[2] of Howrah and the Senior Deputy Collector of Gaya[3] have also been appointed to discharge the functions of a Collector under sections 69 to 71.

Sanction to prosecution.

A Collector acting under sections 69 and 70 is a "Court" within the meaning of section 195 of the Criminal Procedure Code (Act V. of 1898), and his sanction is necessary to a prosecution under sections 465 and 471 of the Indian Penal Code (Act XLV. of 1860) of tenants who are charged with propounding forged rent-receipts in certain appraisement-proceedings before him.[4] A person nominated by him for the purpose of making a division of crops between the landlord and tenant was held[5]

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[1] Notification dated 21st April 1886 in *Calcutta Gazette* of 28th *idem*, Pt. I., p. 466.

[2] Notification dated 28th May 1816 in *Calcutta Gazette* of 2nd June 1886, Pt. I., p. 652.

[3] Notification dated 4th April 1893 in *Calcutta Gazette* of 5th *idem*, Pt. I, p. 274.

[4] *Raghobans Sahoy* v. *Kokil Singh* [1890], I. L. R., 17 Cal. 872.

[5] *Chatter Lall* v. *Thakoor Pershad* [1891], I. L. R., 18 Cal. 518.

not to be a "public servant" within the meaning of section 186 of the Penal Code (Act XLV. of 1860). The addition of sub-section (4) was made in 1907 (and 1908: Assam) to set aside that ruling.

Disputes as to nature of tenancy.

The Collector has no power to decide disputes relating to the nature of the tenancy, *viz.*, whether the tenancy is *bhaoli* or one held on a money-rent. When there is a *bonâ-fide* dispute as to whether rent is *bhaoli* or *nakdi*, a Deputy Collector has no jurisdiction to proceed under sections 69 and 70.[1]

Application under section 69 must be made by joint landlords collectively.

If there are several landlords, an application under section 69 must be made by them collectively, and not by some only. Such an application is authorized by the provisions of the Bengal Tenancy Act, and falls under section 188, *post.*[1] The principle of the recently-added sections, 148A, 158B, and 188A, does not extend to these proceedings under sections 69 and 70; but there is nothing that prevents proceedings being taken under sections 69 and 70 on the application of the tenants concerned, even though some of the co-sharer landlords may object to the proceedings.

Exemption from stamp-duty.

Clause (*b*) of the Exemptions under Article 8, Schedule I., Act II. of 1899 (the Indian Stamp Act), exempts from stamp-duty an appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

Notice.

Section 69 makes no provision for the giving of notice to the opposite party before making an order appointing an officer to make an appraisement; but an officer so appointed must give to the opposite party notice of the time and place at which the appraisement or division will be made [section 70 (*2*) at page next following].

Privity.

Sections 69 and 70 refer to and contemplate proceedings between the landlord and the tenant, and consequently, where,

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[1] *Nukheda Singh* v. *Ripu Mardan Singh* [1898], 4 C. W. N. 239.

in the course of certain proceedings under these sections, an *Amin* was deputed to appraise and divide the crops raised by a tenant, and he, upon the refusal of the landlord to take his share, deposited the same, under the orders of the Collector, with the defendants, who executed a receipt for the same and delivered it to the *Amin*—upon a suit by the landlord to recover from the defendants the value of the crops deposited with them—it was held[1] that the suit was not barred under the provisions of the Bengal Tenancy Act, and that the receipt executed by the defendants established privity between them and the plaintiff.

Procedure where officer appointed.

70. (*1*) When a Collector appoints an officer under the last-foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications, and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(*2*) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but, if either the landlord or the tenant fails to attend, either personally or by agent, he may proceed *ex parte*.

(*3*) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

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[1] *Jaga Singh* v. *Chooa Singh* [1895], I. L. R., 22 Cal. 480. Referred to in *Chhedi* v. *Chhedan* [1905], I. L. R., 32 Cal. 422. *See* note on section 70 (*5*), *infra*.

(*4*) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(*5*) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court; but, subject as aforesaid, his order shall be final, and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(*6*) Where the officer makes an appraisement, the appraisement-papers shall be filed in the Collector's office.

Extended to Orissa (September, 1891).

For commentary, *see* the notes to section 69 (pages 334-36, *ante*).

The jurisdiction of Civil Courts is not limited, nor interfered with, by the pendency of proceedings under these sections.[1]

Section 70 (*5*) of the Bengal Tenancy Act does not bar a suit by a tenant against a third party for recovery of crops awarded to the latter by the Collector.[2] *See* notes on section 71 next following.

Rights and liabilities as to possession of crops.

71. (*1*) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(*2*) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

[1] Special Appeals Nos. 1560 to 1582 and 1808 to 1810 of 1888. *See* notes to next section (71).

[2] *Chhedi* v. *Chhedan* [1905], I. L. R., 32 Cal. 422 (*Jagu Singh* v. *Chooa Singh* [1895], I. L. R., 22 Cal. 400, referred to). *See* footnote (1) on previous page.

(3) In either case, the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Extended to Orissa (September, 1891).

Possession by tenant.

Under the former law, no specific provision was made regarding the possession of the crop in the interval between harvesting and sale where the crop had to be actually divided and sold, and inconvenience and loss sometimes resulted.

Under this section the tenant is entitled to exclusive possession of the produce, and section 186 (*c*), *post*, provides that any person, who, except with the consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding, shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code (Act XLV. of 1860). *See* also section 186 (*2*), *post*.

Jurisdiction of the Civil Court.

In a suit by the *raiyats* to have the *kharif* crop of certain *bhaoli* lands "reaped and threshed through an officer of the Court, and the grain, after deduction of the remuneration of the labourer," divided between the plaintiff and defendants (landlords) in equal shares, it was objected on behalf of the latter that, as the *raiyats* had already applied to the Collector under sections 69 and 70 of the Bengal Tenancy Act, the action was not maintainable. The High Court, overruling the objection of the defendants, held[1] that the jurisdiction of the Civil Court

[1] *Hiramun Sing and others* v. *Mussumat Fasilatunnissa and others*, Special Appeals Nos. 1560 to 1582 of 1888 decided 22nd July 1889 (BANERJI and RAMPINI, *JJ.*).

was superior to that of the Collector under sections 69 and 70 of the Bengal Tenancy Act; and that, so long as no final order has been passed by the Collector in proceedings instituted under those sections, it was quite competent to the Civil Court to proceed with a suit involving the decision of the same question, and, if necessary, direct the Collector to stay his hands. And it was further held that "there was nothing in the Bengal Tenancy Act to show that the provisions of the Civil Procedure Code relating to the taking charge of property in dispute for its preservation, and to the appointment of receivers, were not applicable, under section 143 of that Act, to suits between landlord and tenant."

Liability for Rent on change of Landlord, or after Transfer of Tenure or Holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

72. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer, and was paid to the landlord whose interest was so transferred, unless the transferee has, before the payment, given notice of the transfer to the tenant.

(*2*) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

Extended to Orissa (September, 1891).

References.

Cf. sections 50 and 109 of the Transfer of Property Act (IV. of 1882).

In sections 72 to 75, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent—*see* section 3, clause (*5*), p. 51, *ante*.

Principle.

Section 72 is intended for the protection of the tenants. If the landlord transfers his interest to another person, and yet receives the rent which became due after the transfer, the tenant will not be liable for such rent "unless the transferee has, before the payment, given notice of the transfer to the tenant." It applies to all transfers, whether mediate or immediate.[1]

The section embodies the rule laid down under the former law, when it was held[2] that, if a *raiyat*, without notice of the transfer of the landlord's interest, pays his rent to the former landlord, the transferee cannot recover from him rent so paid But he may sue his transferor for money had and received for his use and benefit. It is not necessary under section 72 that the payment should be made in good faith;[3] it is enough if it be made before the tenant had notice of the transfer.

Right of transferee to sue transferor.

Payment of rent after notice of assignment.

But, where rent becoming due after the assignment is paid to the former proprietor after notice of the assignment, the tenant remains liable therefor to the transferee.[4] And the fact, that the interest transferred was that of a co-sharer landlord, makes no difference in his liability.[4] Where, however, a tenant holding under several co-sharers had been accustomed to pay his rent jointly, and was sued by the assignee of the interest of one of the co-sharers, and it was found that he had paid the rent due for that share, in accordance with that practice, to the co-sharers as a body, which payment was admitted by them, it was *held*[5] that he was exempted from liability.

Payment made by tenant in good faith before due date.

Where the tenant pays the rent to his landlord in good faith before it has become due, and the landlord transfers his proprietary

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[1] *Per* CASPERSZ, *J.* (unreported case)—September 4th, 1909.

[2] *Nilmoney Roy* v. *Hills* [1865], 4 W. R. (Act X. Rulings) 38.

[3] Compare s. 50 of the Transfer of Property Act (No. IV.), 1882, which requires the payment to be in good faith.

[4] *Asim Sirdar* v. *Ram Lall Shaha* [1897], I. L. R., 25 Cal. 324 (*see* p. 330). The same rule was laid down under the old law—*Collector of Rajshahye* v. *Hur Soondery Debea* [1864], W. R., Sp. No., 1866 (Act X. Rulings), 6.

[5] *Ahamudeen* v. *Greesh Chunder Shamunt* [1878], I. L. R., 4 Cal. 350; *see* also *Jadoo Shat* v. *Kadumbinee Dassee* [1881], I. L. R., 7 Cal. 150.

interest, the transferee would be entitled to recover the amount so paid from his transferor;[1] *semble*—not from the tenant.

Assignee taking the property with notice of payment of rent in advance.

And this would especially be the case where the assignee takes the property with knowledge of the fact that the tenant has paid in advance certain debts which only became due after the date of purchase: under such circumstances, the assignee would have no right of recovery against the tenant.[2] Similarly, if he has notice of any contract between his transferor and the tenant, by which the latter is entitled to hold the rent payable by him.[3]

Rent under the Bengal Tenancy Act does not "ordinarily" accrue from day to day.

Under the Bengal Tenancy Act, rent should "ordinarily" be regarded not as accruing from day to day, but as falling due at stated times according to the contract of tenancy, or according to the general law in the absence of such a contract.[4] Accordingly, where a tenure was put up to sale and purchased by the defendant, and the landlord brought a suit for rent for a period previous to the confirmation of sale, and before the title of the purchaser had become perfected, it was held[5] that he was entitled to recover the entire amount of the instalment which fell due after that date. Under the Transfer of Property Act, section 36, as between transferor and transferee, rent accrues due from day to day, and is apportionable accordingly.

Notice to tenant how to be given.

Sub-section (*1*) of section 72 of the present Act does not require that the notice therein mentioned should be given in any particular manner.[5] So long as the fact of the transfer is brought to the knowledge of the tenant, it is sufficient. Under sub-section (*2*), a general notice is sufficient:[6] it must be published in the prescribed manner, that is to say in the manner prescribed by rule 33 of Chapter V. of the Government Rules in Appendix V. to this work, *post*.

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[1] *Madan Mohun Lal* v. *Holloway* [1886], I. L. R., 12 Cal. 555.
[2] *Ram Lall Shaha* v. *Jogendro Narain Roy* [1872], 18 W. R. 328.
[3] *Churaman Singh* v. *Patu Kuar* [1875], 24 W. R. 68.
[4] *Satyendra Nath Thakur* v. *Nilkantha Singha* [1893], I. L. R., 21 Cal. 383.
[5] *Madhub Ram* v. *Doyal Chand Ghose* [1897], I L. R., 25 Cal. 445: S. C., 2 C. W. N. 108.
[6] *Nobin Chandra* v. *Surendra Nath Ghose* [1903], 7 C. W. N. 454.

A suit by an assignee for arrears of rent after they fell due not cognizable by the Small Cause Court.

A suit brought by an assignee for arrears of rent after they fell due, for the recovery of the amount due, is a suit for rent, and is therefore excepted from the cognizance of the Court of Small Causes.[1] Compare section 148 (*h*), *post*, which restrains an assignee from executing a rent-decree unless he has become the landlord.

Liability for rent after transfer of occupancy-holding.

73. When an occupancy-*raiyat* transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer unless and until notice of the transfer is given to the landlord in the prescribed manner.

Extended to Orissa (September, 1891).

Principle.

This section is intended to apply to cases in which transfer without the landlord's consent is valid by custom. In such cases, until notice of the transfer is duly served on the landlord, the transferor and the transferee are jointly and severally liable for arrears of rent accruing after the transfer.[2]

The remedies provided by the Rent Law for enforcing the payment of rent by sale of tenure or holding are remedies *in rem*.

Under section 65[3] the holding of an occupancy-*raiyat* is liable to sale in execution of a decree for the rent thereof, which is declared to be a first charge thereon. So, when the holding is transferred, it continues liable in the hands of the transferee for arrears already accrued due.[4] The landlord's remedy is, however, confined to the sale of the holding under his decree. He cannot make the transferee personally liable for rent which accrued due before he became the owner of such holding.[5] The remedies

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[1] *Srish Chunder Bose* v. *Nachin Kasi* [1900], I. L. R., 27 Cal. 827. Full Bench dissenting from the views expressed in older cases, *e g.*, W. R., 1864, Sp. No. (Act X.), 3 and 127, and *Bhawgan Sahai* v. *Singeswar Chaudri* [1873], 19 W. R. 431, followed.

[2] Para. 34 of Report of the Select Committee—Selections, p. 386.

[3] See p. 305, *ante*.

[4] *Rash Behary Bundopadhya* v. *Peary Mohun Mookerji* [1878], I. L. R., 4 Cal. 346; *Sham Chand Kundu* v. *Brojo Nath Pal Chowdhury* [1873], 12 B. L. R. 484; S. C., 21 W. R. 94. *See* also notes to s. 72, *supra* (pp. 339-42), regarding accrual of rent due at fixed intervals, and not from day to day.

[5] *Rash Behary Bundopadhya* v. *Peary Mohun Mookerji* [1878], I. L. R., 4 Cal. 346.

which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or holding, or by distress, are remedies *in rem*. The personal liability of one tenant cannot be transferred to another.[1]

Of course, if the transfer is made with the consent of the landlord, the liability of the outgoing *raiyat* ceases. But, where the transfer is made without the landlord's consent, the liability continues until notice has been given to the landlord in the manner prescribed by the Local Government.[2]

The liability of the recorded tenant in the case of a tenure and a holding respectively.

In the case of a tenure, the liability of the recorded tenant, who has transferred his tenure to another person, ceases as soon as the transfer has been duly registered under the provisions of the Bengal Tenancy Act, although the landlord may not have received actual notice of such transfer.[3] In the case of a transfer of his holding by an occupancy-*raiyat*, it is different.

No suit for registration of occupancy-raiyat's name.

The transferee of an occupancy-holding which is transferable by custom cannot maintain a suit for compelling the landlord to register his name in the *zamindar's serishta*.[4] When occupancy-rights, transferable by custom, have been transferred, it is open to the transferee to sue under the Specific Relief Act (I. of 1877) to have it declared that he had acquired certain rights. But, when the object of the suit is to have it declared that the old tenant is no longer responsible for the rent, and that the transferee is so responsible, such a declaration cannot be obtained without service of the notice under this section.[4]

The Specific Relief Act (I. of 1877).

Transfer of part of holding.

In the case of the transfer of the entire holding, the transferor and transferee are liable jointly and severally for arrears accruing due after the transfer. But, where only a part of the holding is transferred, the recorded *raiyat* continues solely liable

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[1] *Rash Behary Bundopadhya* v. *Peary Mohun Mookerji* [1878], I. L. R., 4 Cal. 346.

[2] *See* rules 34, 35, in Chapter V. in Appendix V. to this work, *post*.

[3] *Kristo Bullub Ghose* v. *Kristo Lall Singh* [1889], I. L. R., 16 Cal. 642; *Mohamed Abbas Mondul* v. *Brojo Sundari Debia* [1891], I. L. R., 18 Cal. 360 (F. B.); *Chintamoni Dutt* v. *Rash Behari Mondul* [1891], I. L. R., 19 Cal. 17.

[4] *Ambica Pershad Chowdhry* v. *Keshri Sahai* [1897], I. L. R., 24 Cal. 642.

for the entire rent. *See* also section 88, *post.* Neither the sale of the entire holding nor the sale of a part is a ground of forfeiture.[1]

Where landlord has knowledge of the transfer of a holding.

Where the landlord, not only has knowledge of the transfer, but also has received rent from the transferee of a holding which was transferable by custom without the consent of the landlord, he cannot regard the transferor as still in occupation of his holding.[2] *Cf.* sections 178 (*3*) (*d*) and 183 (*Illustration*), *post.*

But the receipt by the landlord of rent from a transferee of a holding, not on his own account, but as an agent of the transferor, is not a recognition of the transfer.[3]

Receipt of rent.

Receipt of rent would be equivalent to consent. And this not merely in the case of holdings transferable by custom, for, as already observed, even where the holdings are not transferable, receipt of rent would amount to a recognition and sanction of the transfer.[4]

No provision in the section for apportionment of rent.

No provision is made in the section for the apportionment of the rent of a holding or tenure when the property in which such tenure or holding is situated is transferred to more than one person.[5] The Estates' Partition Act (Bengal Act V. of 1897), section 81, empowers the Revenue-officer charged with

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[1] *Kabil Sardar* v. *Chunder Nath Nag Chowdhry* [1892], I. L. R., 20 Cal. 590.

[2] *Abdul Asis* v. *Ahmed Ali* [1887], I. L. R., 14 Cal 795.

[3] *Debnarain Dutt* v. *Baidya Nath* [1910], 14 C. W. N. 68, distinguishing *Nabakumari Debi* v. *Behari Lal Sen* [P. C.—1907], I. L R, 34 Cal. 903, in which it was *held* that there was a sufficient recognition of the transferee as tenant when receipts were granted stating that the payer was the occupier of a tenure, and was paying (the rent of it) on her own account, though they did not expressly recognize the transferee as tenant of the tenure.

[4] *See* notes to s. 26, pp. 170, 171, 172, *ante.*

[5] S. 37 of the Transfer of Property Act (IV. of 1882) provides as follows: "When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in such property, provided that the duty can be severed," etc. It is also declared, as a proviso, that the person on whom the duty lies must have had "reasonable notice of the severance." *But these provisions do not apply to agricultural lands* "unless and until the Local Government, by notification in the local Gazette, so directs." Nothing has been done yet to extend the application of the section, and, probably, advisedly.

the duty of partitioning a revenue-paying estate to apportion the rents of holdings or tenures included therein. In all other cases, co-sharer landlords desiring an apportionment must proceed by a regular action in the Civil Court.[1]

Examination of cases relating to apportionment.

The principle relating to the right of having the rent apportioned was laid down[2] distinctly by the Full Bench as follows in 1880:—

A sale of a share in a tenure, which has been let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but, if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But, if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect; and then, if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit. No real injustice will be done to the tenant under such circumstances, because the possibility of the severance of the tenure, by *butwara*, sale, or otherwise, is only one of those incidents

[1] *Beni Madhub Ghosh* v. *Thakur Das Mandal* [1861], B. L. R., F. B., 588: S. C., 6 W. R. (Act X.) 71; *Gopanund Jha* v. *Govind Prosad* [1869], 12 W. R. 109. In this case it was ruled that, when a lessee is evicted by title paramount to that of his lessor, an apportionment of the rent may take place in an action brought for the purpose, and that the onus is on the lessor to show what is the fair rent of the land out of which the tenant was not evicted. *See* also *Sreenath Chunder Chowdhry* v. *Mohesh Chandra Bandopadhya* [1878], 1 C. L. R. 453; *Annoda Charan Rai* v. *Kali Kumar Rai* [1878], I. L. R., 4 Cal. 89. In this case GARTH, *C. J.*, said: "If *ijmali* property is let to a tenant at one entire rent, we think it clear, upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not. Of course, if the land demised ceases to be *ijmali*, and one portion of the divided area becomes the property of *A* whilst another becomes the property of *B*, it is necessary that an apportionment of the rent should take place: and then, in order to obtain such an apportionment, it would be quite proper that either *A* or *B* should bring a suit against the tenant for so much of the rent as he considers his proper portion, making *B* or *A*, as the case may be, defendant to the suit. But, here, there has been no division of the area of the property The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the co-sharers remains *ijmali*."

[2] *Ishwar Chunder Dutt* v. *Ram Krishna Dass* [1880], I. L. R., 5 Cal. (F. B.) 902: 6 C. L. R. 421.

of the property which every tenant is, or must be presumed to have been aware of when he took his lease.....It is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction; or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons from those where it is sold to different persons in undivided shares. In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser; and it would lead to most inconvenient results, and to the depreciation of the property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents, in one entire sum, conjointly with one another, or with the owners of the unsold shares or portions.[1]

[NOTE.—*'Tenure' here means 'tenancy,' not 'tenure' as defined in this Act.*]

Examination of cases, &c. (*contd.*).

In another case,[2] it appeared that the plaintiff held a *jote* under the defendants and his co-sharers, who were jointly in possession of an estate paying revenue to Government. A partition of the estate was effected in 1877; and, out of the lands held by the plaintiff, a plot of fifteen *cottas* in extent was allotted to the defendants as their share. It was not disputed that the rate of rent payable by the plaintiff was joint, and that it was Rs. 4 per *bigha;* after the partition, the defendants demanded and enforced payment of Rs. 5 on account of the fifteen *cottas* plot that fell to their share. The plaintiff thereupon instituted a suit, nominally under section 19 of Bengal Act VIII. of 1869, for abatement of rent, and for a declaration that he was only bound to pay rent at the rate of Rs. 4 per *bigha* for the amount of land held by him, and obtained a decree. In second appeal, the decree was affirmed, but it was pointed out that the suit was not really for abatement of rent, but for apportionment, and for a declaration that, after partition, the share of the rent, which the plaintiff was liable to pay to the defendant, was as stated in the plaint.

When one co-sharer had obtained a decree for his share

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[1] *Ishwar Chunder Dutt* v. *Ram Krishna Dass* [1880], I. L. R., 5 Cal. (F. B.) 902: 6 C. L. R 421.

[2] *Durga Pershad* v. *Ghosita Goria* [1885], I. L. R., 11 Cal. 284.

of the rent separately, and the other co-sharers served notices, and sued for apportionment of rent, it was held[1] that there was no reason why the rent should not be apportioned, provided the notice was sufficient.

It has also been held[2] that, when plaintiffs, who were joint landlords, have, in suits separately instituted by them against the tenant defendant, asked for apportionment of rent, and for recovery of rents due on such apportionment, and all the parties interested have been made parties to the suits, there was no valid reason why the plaintiffs should not have the rents apportioned, and that the apportionment might take place of the sum due for arrears, as well as with regard to the future rent.

Liability to pay cess.

In a suit[3] brought by the landlord for rent and cesses of an under-tenure (*darganti*) created after the valuation of the landlord's property (a *ganti* tenure) by the Collector under the Cess Act (Bengal Act IX. of 1880), it has been held that, although the Collector has not separately assessed the annual value of the land of the under-tenure so created, the under-tenant is nevertheless liable for any cesses in respect of that land, and that it is competent to the Court to ascertain the annual value of the land comprised in the defendant's tenure so as to ascertain the amount due for cesses.

Parties to a suit for apportionment.

In a suit for apportionment of rent, the plaintiff must make all his co-sharers parties, otherwise the suit is badly framed, and should be dismissed.[4]

Apportionment how made.

In making the apportionment, the Court must proceed on the basis of the present assets of the different portions of the tenure which have passed into different hands.[5]

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[1] *Banwari Lal Mitra* v. *Kuladananda Chowdhry* [1899], 1 C. W. N. clxxviii.

[2] *Raj Narain Mitter* v. *Ekadasi Bag* [1899], I. L R., 27 Cal. 479: 4 C. W. N. 494 *See* also *Sreenath Chowdhry* v. *Mohesh Chunder Bundopadhya* [1878], 1 C. L R. 453; *Ishwar Chunder Dutt* v. *Ram Krishna Dass* [1880], I. L. R., 5 Cal. (F. B.) 902: S. C., 6 C. L. R. 421.

[3] *Hari Mohan Dalal* v. *Ashutosh Dhur* [1900] 4 C. W. N 776.

[4] *Ishwar Chunder Dutt* v *Ram Krishna Dass* [1880], I. L. R., 5 Cal. (F. B.) 902: 6 C. L R 421; *Abhoy Gobind Chowdhry* v. *Hari Charan Chowdhry* [1882], I. L. R., 8 Cal. 277.

[5] *Hari Kishen Bhagat* v. *Taluhdhari Lal* [1903], 7 C. W. N. 453.

Service of notices.

As to the method prescribed for service of notices under this section, *see* rules 34 and 35 of Chapter V. in Appendix V. to this work, *post*.

Illegal Cesses, &c.

Abwabs, &c., illegal.

74. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appellations in addition to the actual rent shall be illegal; and all stipulations and reservations for the payment of such shall be void.

References.

Cf. sections 54, 55, and 61 of Regulation VIII. of 1793; section 3 of Regulation V. of 1812; section 10 of Act X. of 1859; and section 11 of Bengal Act VIII. of 1869. *See* also section 179, *post*.

Principle.

By this section, which embodies the rule laid down in section 54 of Regulation VIII. of 1793, all impositions and exactions, whatever their designation, over and above the actual rent, are declared to be illegal; and all stipulations for the payment of such impositions are void, and cannot be enforced. It must be noted that the expression "tenant" includes lessees or *ijaradars*,[1] and that, therefore, a contract by them to pay *abwabs* cannot be enforced except in cases covered by section 179, *post*, which *see*.

Early attempts to deal with illegal cesses.

The Legislature has, from the earliest times, attempted to deal with the evil of *abwabs*: how ineffectual its efforts have been will be seen, not only from the necessity for the enactment contained in this section, but also from the case-law on the subject. The first attempt to protect *raiyats* from illegal exactions was made in the year 1793, the time of the great Settlement, when the rights of the landlords themselves were being placed on a permanent basis.

The provisions of earlier enactments as to illegal cesses or abwabs.

Section 54 of Regulation VIII. of 1793 required that all existing *abwabs* should be consolidated with the *asal jama* into one specific sum; and section 55 prohibited the imposition

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[1] Special Appeal No. 1632 of 1892 decided by PETHERAM, *C. J.*, and AMEER ALI, *J.*—7th March 1894.

of any new *abwabs* or *mahtut* upon the *raiyats*, upon any pretence whatever, upon pain of a penalty of three times the amount imposed for the entire period of the imposition. Section 3 of Regulation V. of 1812 altered some of the provisions of Regulation VIII. of 1793, but declared that nothing therein contained should be construed as sanctioning or legalizing the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mahtut*, or any other denomination. Section 10 of Act X. of 1859 and section 11 of Bengal Act VIII. of 1869 provided that under-tenants or *raiyats*, if any sum was exacted from them in excess of the sum specified in the *patta*, whether as *abwab*, or on any other pretext, should be entitled to recover damages not exceeding double the amount so exacted.

Case-law not on an uniform basis.

Examination of the cases

In spite of these statutory provisions, the case-law on the subject did not proceed on an uniform basis. It was held[1] that, in the absence of a special agreement, a claim for an illegal cess could not be recovered in a Court of law; that an arbitrary and indefinite cess on *raiyats*, such as is described in section 54 of Regulation VIII. of 1793, was prohibited by section 10 of Act X. of 1859;[2] and that a contract providing for the collection and payment over to the *zamindar* of the proceeds of such a cess appeared to fall within the rule stated by HOLT, *C. J.*, in *Bartlet* v. *Viner Cartherd*;[3] that, all cesses being illegal when specifically included in the contract under which the *raiyat* paid his rent, the mere payment of rent including a cess for three years could not legalise an illegal impost.[4]

Result of the old rulings.

As a logical consequence, from these rulings it followed that, where the *zamindar* demanded cess over and above the original rent, and the *raiyat* consented and contracted to pay it, this

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[1] *Sonnum Sookul* v. *Shaik Elahee Bukhsh* [1867], 7 W. R. 453.

[2] *Kumala Kanto Ghose* v. *Kanoo Mahomed Mundal* [1869], 11 W. R. 395; *Nobin Chunder Roy* v. *Goroo Gobind Surma Mazumdar* [1870], 14 W. R. 447: [1875], 25 W. R. 2.

[3] *See* notes in *Kumala Kanto Ghose* v. *Kanoo Mahomed Mundal* [1869], 11 W. R. 395.

[4] *Dhalee Paramanik* v. *Anund Chunder Tolapattur* [1866], 5 W. R. (Act X. Rulings) 85.

demand and the old rent formed a new rent lawfully claimable under the contract.[1]

Certain imposts delared not to be illegal abwabs.

And, where a *tahsildar* had obtained payments from *raiyats* by way of *bhika*[2] over and above the rent, such sums, if paid voluntarily, and not 'exacted,' were for the benefit of the landlord; and the agent was accountable for the same to the landlord.[3]

And, again, where a *raiyat* had for many years been paying a *tallab beshi* of two annas in each rupee in addition to the *asal jama* of the holding, and the two payments had been incorporated in time, and had actually formed the subject of a single receipt, which the *zamindar* challenged the *raiyat*, but which the *raiyat* failed, to produce; and where a *raiyat*, for the purpose of preventing disputes with his landlord, and for securing his own interests, had agreed to make a definite payment to his landlord in addition to his rent, such additional payments were held[4] not to be an illegal cess, for, it was said, section 3 of Regulation V. of 1812 favoured such arrangements, and provided for their being enforced.

And, where a tenant had covenanted in his lease to pay to the landlord collection charges, such covenant was held[5] to be enforceable in law, it being definite and certain in its nature, and forming part of the consideration for the lease.

Similarly, certain payments, "which were not so much in the nature of cesses as of rent in kind," and which were uniform, and had been made by the *raiyat* from the beginning, according to local custom,[6] were held[7] not to be illegal cesses.

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[1] *Ge atoollah Paramanik* v. *Jogodindro Narain Roy* [1874], 22 W. R. 12.
[2] Free gifts or alms.
[3] *Nobin Chunder Roy* v. *Guru Gobind Mosumdar* [1875], 25 W. R. 8.
[4] *Serajgunj Jute Co.* v *Tarabdi Akoond* [1876], 25 W. R. 252.
[5] *Mohamed Fais Chowdhri* v. *Jamu Ghasi* [1882], I. L. R., 8 Cal. 730.
[6] In Behar and parts of Bengal, the *raiyats* were accustomed to give the landlord, along with the rent, a quantity of molasses, *chura dahi*, and similar articles.
[7] *Budhna Orawan Mahton* v. *Jemadar Juggeswar Doyal Sing* [1875], 24 W. R. 4.

And a *purab*[1] was held[2] not to be in the nature of an *abwab* or illegal cess, but a part of the legal consideration for a contract.

Also imposts levied by riparian proprietors from boatmen for driving pegs into the river bank for the purpose of attaching their boats thereto were declared[3] not to be illegal cesses.

Certain imposts declared to be illegal abwabs.

On the other hand, it was held[4] that payments over and above rent, and described as *abwabs* in the *zamindar's accounts*, for which, as *abwabs*, the tenant was sued, were held to be rightly treated as *abwabs*, and not as forming part of the rent fixed. They were held not to be recoverable from the tenant, although they had been paid for a period of unknown length, and according to a long-standing practice, not having been, if payable at the time of the Permanent Settlement, consolidated with the rent, as they should have been, if then payable, under section 54 of Regulation VIII. of 1793. Not having been so consolidated, their recovery was barred by section 61 of that Regulation. If not payable at the time of the Permanent Settlement, they came under the term of new *abwabs*, and, in that case, were illegal under section 55 of the Regulation.

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[1] Payments made to the landlord on occasions of festivals.

[2] *Juggodish Chunder Biswas* v. *Turrikoollah Sircar* [1875], 24 W. R. 90.

[3] *Dhunput Singh* v. *Dino Bundhu Saha* [1881] 9 C. L. R. 279.

[4] *Chultan Mahton* v. *Tilukdari Singh* [1885], I. L. R., 11 Cal. 175: on appeal before the Privy Council [1889], I. L. R., 17 Cal. 131: S. C., L. R., 16 I. A. 152. The Privy Council decision overrules the view expressed by a Division Bench of the Calcutta High Court in *Padmanund Singh* v. *Baijnath Singh* [1888], I. L. R., 15 Cal. 828, in which the learned Judges (TOTTENHAM and GHOSE, JJ.) had held that "what is or is not an *abwab* must depend upon the circumstance of each particular case in which the question arises," and that the Regulation supported the plaintiff's claim "because the items in dispute are not arbitrary, and uncertain in their character, but they are specific sums which the tenants agreed to pay to the landlords; and, from the terms of their *kabuliyat*, it seems to us that the payment of these items, no less than the payment of the *jama* itself, formed part of the consideration upon which the tenancy was created." *See* the remarks of PETHERAM, *C. J.*, in *Radha Prosad Singh* v. *Bal Kowar Koeri* [1890], I. L. R., 17 Cal 726.

In the case of *Chultan Mahton* v. *Tilukdari Singh*, the items claimed were rent, *dustur*, *hujatana*, *sonari battamal*, *batta Company*, *neg*, *pansera* or harvest fee, *bodhwara* or fee for the wages of village watchman, *pohwi* or fee for the wages of the priest, *nocha* or fee for the wages of village establishments, *siddha* or *pulwari's* due, and *mangan*, a percentage of produce.

The Judicial Committee of the Privy Council in this case said as follows:—

Are these payments, over and above rent, properly so called, *abwabs* within the meaning of the word as used in Regulation VIII. of 1793. They are described in the plaint as "old usual *abwabs*"; and they are also described as *abwabs* in the *zamindari* accounts. It appears to their Lordships that the High Court was perfectly right in treating them as *abwabs*, and not as part of the rent. Unquestionably they have been paid for a long period: how long, does not appear. They are said to have been paid according to long-standing custom. Whether that means that they were payable at the time of the Permanent Settlement or not is not plain. If they were payable at the time of the Permanent Settlement, they ought to have been consolidated with the rent under section 54 of Regulation VIII. of 1793. Not being so consolidated, they cannot now be recovered under section 61 of that Regulation. If they were not payable at the time of the Permanent Settlement, they would come under the description of new *abwabs* in section 55, and they would be in that case illegal.

Cases under the present law.

The above case had arisen before the present enactment. The question came up for discussion again after the passing of Act VIII. of 1885. And, upon a review of the previous legislation on the subject and the entire history of *abwabs*, the Full Bench came to the conclusion[1] that—

Nothing could be recovered for the occupation of land except one sum which must include everything which was payable for such occupation, arrived at either by agreement, or by some judicial determination between the parties; and any contract, whether express or implied, to pay anything beyond that sum, under any name whatever, for or in respect of the occupation of the land, could not be enforced.

Accordingly, certain demands for *sarak*,[2] *neg*,[3] and *kharach*,[4] which had been paid for a long time along with the rent, and without specification in the rent-receipts, were held[1] to be illegal cesses under section 74 of the Act, and not recoverable in law. Similarly, a condition to pay a certain amount as the *mamuli*

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[1] *Radha Prosad Singh* v. *Bal Kowar Koeri* [1890], I. L. R., 17 Cal. 726 (F. B.)

[2] *Sarak*—payment made by way of contribution for the maintenance of village paths or roads.

[3] Landlord's due.

[4] The difference between the Company's rupees and *sicca* rupees.

of the landlord's *Thakurbari* in the month of *Bhadro* every year was held[1] to fall within the provisions of section 74 of Act VIII. of 1885 and the scope of the Full Bench ruling.

Cesses declared illegal under Reg. VIII. of 1793.

Under Regulation VIII. of 1793, the following exactions were declared to be illegal: (1) *zabita batta* or customary levy;[2] (2) *mehmani*—guest money, and *Nazrana*—presents;[3] (3) *bardana, batta*, and *kotwali*—tobacco;[4] (4) *chanda*—subscriptions;[5] (5) *russoom kazza*—or *Kazi's* fees.[6]

Cesses declared illegal under Act X. of 1859.

After the passing of Act X. of 1859, there were further decisions on the subject of illegal cesses, *e.g.*, the following were declared to be illegal, (6) *najai*—a tax assessed upon the cultivators present to make up for any deficiency arising from the death or disappearance of their neighbours;[7] (7) a cess of so much *gur* (molasses) on every maund manufactured;[8] (8) a cess for grazing cattle on a *jotedar's* own *jote*, but within the *zamindar's* estate;[9] (9) *rakumât*—or miscellaneous items;[10] (10) *parabi* or festival cess;[11] (11) *patwarian* or *patwari's* fees;[12] (12) *purvi bhika*—a sum collected on the occasion of the *annaprasan* ceremony (the first eating of rice after birth) of the *zamindar's* son;[13] (13) *patwari's* wages, *sidha*, or daily allow-

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[1] Appeal from Appellate Decree 726 of 1899, judgment, 17th May 1901 (AMEER ALI and PRATT, JJ.). In this case, a rule (Rule 1233 of 1902) was granted for review of judgment on the ground that the contract was governed by s. 179 of the Act. The rule was discharged on the 22nd December 1902—*see* note under s. 179, *post*.

[2] *Radha Mohan Sarma* v. *Ganga Prasad Chuckerbatty* [1843], 7 S. D. A. Select Repts. 166.

[3] *Madho Singh* v. *Bidyanand Singh* [1848] S D. A. Repts., 1848, 442.

[4] *Chakan Sahu* v. *Rup Chand Pandey* [1848], S. D. A. Repts., 1848, 680.

[5] *Meliss* v. *Meghnath Thakur* [1852], S D. A. Repts. 4, decided 13th January 1852.

[6] *Lakhee Debbea Chowdhrain* v. *Sheikh Ahta* [1852], S. D. A. Repts., 552, decided 23rd June.

[7] *See* Wilson's Glossary, p. 363; *Dhali Paramanik* v. *Anand Chandra Tolapatro* [1866], 5 W. R. (Act X.) 86.

[8] *Sonam Sukal* v. *Ilahi Baksh* [1867], 7 W. R. 453.

[9] *Bhaghirath Shikdar* v. *Ramnarain Mandar* [1868], 9 W. R. 300.

[10] *Arjun Sahu* v. *Anand Singh* [1868], 10 W. R. 257.

[11] *Kamala Kant Ghose* v. *Kanu Mohamed Mandal* [1869], 11 W. R. 395: 3 B. L. R. (A. C.) 44, *contra*—*Jagadish Chandra Biswas* v. *Tarikullah Sirkar* [1875], 24 W. R. 90.

[12] *Barmah Chowdhri* v. *Srinand Singh* [1869], 12 W. R. 29.

[13] *Nobin Chandra Ray* v. *Guru Gobind Sarmah* [1870], 14 W. R. 447.

ance, and *pasban's* or watchman's wages;[1] (14) *bhet* and *begar*—presents and gratuitous labour.[2]

Batta when not an abwab.

Regarded merely as the amount representing the difference between *sicca* rupees and the Company's rupees,[3] *batta* would not be an *abwab*.[4] By Act XIII. of 1836, Calcutta *sicca* rupees ceased to be legal tender, but were receivable at public treasuries subject to a charge of one per cent. for re-coinage. If the tenancy was created before 1836, *batta* would, *primâ facie*, be not an *abwab*; but, if the creation of the tenancy is of subsequent date, *batta* would *primâ facie* be an *abwab*.

Dak-cess

Dâk-cess is a cess or tax levied by Government on *zamindars* in consideration of conveyance by Government of the *dâk* or post. The liability of the tenant to pay this cess depends on the terms of his agreement with the landlord.[5] He is not bound to pay it in consideration of his holding under the landlord, or for the use and occupation of the land. But it is not an illegal cess. It was abolished by Act IV. of 1907.

G.-G. in Council Act IV. of 1907, repealing Bengal Act VIII. of 1862

A suit for *dâk*-cess is ordinarily cognizable by the Court of Small Causes.[6] But, where it is claimed under the contract by which the rent is payable, practically as part of the rent, and the occupation of the land is the consideration for its payment, it must be regarded as rent, that is to say, as a part of

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[1] *Mengar Mandar* v. *Hari Mohun Thakur* [1875], 23 W. R. 447.

[2] Special Appeal No. 47 of 1893, decided by NORRIS and BANNERJI, *JJ.*—19th March 1894.

[3] Company's rupees were first introduced by Act XVII. of 1835.

[4] Special Appeals Nos. 1368 to 1371 of 1886 decided by PETHERAM, *C. J.*, and GHOSH, *J.*, 13th April 1887, and Special Appeal No. 1397 of 1891 decided by MACPHERSON, *J.*, 13th May 1892.

[5] S. 12, Bengal Act VIII. of 1862; see *Saroda Sundari Dabi* v. *Umacharan Sarkar* [1865], 3 W. R. (S. C. C. Ref.) 17; *Saroda Sundari Dabi* v. *Tarini Charan Saha* [1865], 3 W. R. (S. C. C. Ref.) 19; *Rakhal Das Mukerji* v. *Sarnomoye* [1866], 6 W. R. 100; *Rohini Kanto Roy* v. *Tripura Sundari Dasi* [1867], 8 W. R 45. Only in one case was it he'd that a *zamindar* was entitled, under Bengal Act VIII. of 1862, to reimburse himself from the *patnidar* for *dâk*-charges, if, under the old law, he had been in the habit of paying them—*Bissonath Sarkar* v. *Rani Surnomoyie* [1865], 4 W. R. 6.

[6] *Dheraj Mahtab Chand* v. *Radha Binod Choudhri* [1867], 8 W. R. 517; *Erskine* v. *Trilochan Chatterji* [1868], 9 W. R. 518.

what is lawfully payable in money for use and occupation of land held by the tenant[1]—*see* note to section 153, *post*.

Collection-charges.

Where a lease described a certain sum as collection-charges and as forming part of the consideration of the lease, it was held[2] that the sum was part of the rent, and was not an *abwab*.

Road and Public Works cesses and *pujah kharach*.

Where, by the term of the *kabuliat*, an occupancy-*raiyat* agreed to pay, in excess of the rent, Road and Public Works cesses at the rate of 1 anna per rupee, and puja *kharach* at the rate of half-an-anna per rupee according to the *kist* of rent, *held*[3] that the puja *kharach* was an *abwab*, and therefore not recoverable by suit; but that the cesses would not come within the definition (*sic*) of an *abwab* in section 74 of the Bengal Tenancy Act, and that the contract to pay more than the proportion payable by the tenant under the Road Cess Act was legal. It should be noted, however, that section 74 does not contain any definition whatever of '*abwab*.'

Chaukidars' wages.

Similarly, as regards *chaukidars*' wages. Where a *patnidar* was, by the terms of his lease, bound to pay half of the pay of the village-*chaukidars*, and the stipulation had been entered into between parties competent to contract, and had been made for valuable consideration, it has been held[4] that the amount the *patnidar* had agreed to pay was to be paid quite as much on account of the occupation of the land as that which was expressly called the rent, and was part of the ground-rent quite as much as the latter. It was, therefore, not an *abwab*, and was recoverable.

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[1] *Watson* v. *Sreekristo Bhumik* [1893], I. L. R., 21 Cal. 132.

[2] *Radha Churn Roy Chaudhuri* v. *Golap Chandra Ghose* [1904], 8 C. W. N. 529.

[3] *Narendra Kumar Ghose* v. *Gora Chand Poddar* [1906], I. L. R., 33 Cal. 683.

[4] *Assanulla Khan Bahadoor* v. *Tirthabashini* [1895], I. L. R., 22 Cal. 680.

Res judicata.

When, in a suit for rent,[1] the rent claimed expressly includes an item which is objected to as an illegal cess, the mere fact, that, in a previous rent-suit between the same parties regarding the same tenure, the defendant did not raise this plea, although he could have done so, would not, in the absence of a judicial determination of the point in the previous suit, preclude him from raising it in the subsequent suit.

Section 74 does not control section 179.

Section 74 does not control section 179, *post*, which declares that nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant. Accordingly, where the defendant, a *darpatnidar*, stipulated in the *kabuliyat* for the annual payment of Rs. 4 in lieu of certain quantities of jack fruit, bamboos, and fish, which stipulation was contained in a clause perfectly distinct from that relating to the payment of rent, which was payable quarterly, it was *held*[2] that, although such a stipulation was a stipulation for the payment of an *abwab*, yet, being under a permanent *mukarrari* lease, it was valid. *See*, further, the notes under section 179, *post*.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Ben. Act I., 1907; E. B. Assam Act I., 1908.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent [or interest] lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred

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[1] *Woomesh Chundra Moitra* v. *Barada Das Moitra* [1900], I. L. R., 28 Cal. 17; *see* also *Kai'ash Mondul* v. *Baroda Sundari Dasi* [1897], I. L. R., 24 Cal. 711.

[2] *Krishna Chundra Sen* v. *Sushila Sundary Dassee* [1899], I. L. R., 2 Cal. 611.

rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Extended to Orissa (September, 1891).

Cf. section 10 of Act X. of 1859 and section 11 of Bengal Act VIII. of 1869. The words '*or interest*' were added as a consequence of the alteration in section 67, *supra*, page 324. **References.**

This section provides the penalty for exactions by landlords of any sum in excess of the rent payable, save under any special enactment "for the time being in force," *e. g.*, the Bengal Survey Act (Bengal Act V. of 1875), section 38, the Cess Act (Bengal Act IX. of 1880), section 47, the Bengal Embankments Act (Bengal Act II. of 1882), section 74, the Drainage Acts (VI. of 1880, section 44, and VIII. of 1895, sections 23, 24). **Principle.**

Under Regulation VIII. of 1793, it was held[1] that money realized under a proceeding prescribed by law did not come within the meaning of the word "exacted." **Money realized under process of law is not "exacted."**

Where a *zamindar*, after granting a *zur-i-peshgi* or *thika* lease, collected the rent direct from the *raiyats*, and the amount so received exceeded the rent due from the *thikadar*, the excess amount so collected was treated as an exaction, and was held[2] to be recoverable under the law. And, where the plaintiff, on the allegation that the defendant had sublet land to him for the purpose of raising crops under a contract to share the produce between them, sought to recover the value of his share which the defendant had misappropriated, it was held that the claim was for a sum exacted in excess of the rent. **Case-law as to the meaning of "exacted."**

But, where a *zamindar* is supplied with rice on the agreement that the value of the rice was to be deducted from the

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[1] *Chandra Moni Chowdhurani* v. *Debendro Nath Rai* [1863], Marshall's Reports 420. *See* also *Narendra Kumar Ghose* v. *Gora Chand Poddar* [1906] I. L. R., 33 Cal. 683, which authorizes a landlord to recover from his tenant more than the proportion of Road cess payable by tenants under the Cess Act.

[2] *Ram Pershad Vogut* v. *Ram Tahal Singh* [1863], Marshall's Reports, 655.

rent, and the *zamindar*, without making the deduction, sued the tenant under Regulation VIII. of 1819, and recovered the full amount of the rent, it was held[1] that this was not an "exaction."

The present law.

These rulings would seem to be applicable under the present Act.

Cognizance by the Small Cause Court of suits for the recovery of money exacted by the landlord.

A suit brought under the provisions of section 75 of the Bengal Tenancy Act for recovery of a sum alleged by the plaintiff to have been paid by him to, or taken from him by, the landlord, in excess of the rent of his holding, is properly a suit between landlord and tenant. But section 144 of the Bengal Tenancy Act does not override the provisions of the Civil Procedure Code, which declares certain suits to be cognizable by the Court of Small Causes. Accordingly, when the suit is so cognizable, no second appeal lies to the High Court.[2]

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[1] *Gurreebollah Puramanik* v. *Fakeer Mahomed Khaloo* [1868], 10 W. R. 203.
[2] *Bango Roy* v *Frederick Holloway* [1899], 4 C. W. N. 95.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

76. (*1*) For the purposes of this Act, the term "improvement," used with reference to a *raiyat's* holding, shall mean any work which adds to the value of the holding, which is suitable to the holding, and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it. Definition of "improvement".

(*2*) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(*a*) The construction of wells, tanks, water-channels, and other works for the storage, supply, or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;

(*b*) the preparation of land for irrigation ;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;

(*d*) the reclamation, clearance, enclosure, or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the *raiyat* and his family, together with all necessary out-offices.

(8) But no work executed by the *raiyat* of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Principle.

Sections 76 to 83 are new. They were taken generally from the North-Western Provinces Rent Act, XII. of 1881, and the Land Improvement Loans Act, XIX. of 1883, and were introduced into the Bengal Tenancy Act in the hope that they would conduce to better cultivation and a higher standard of agriculture. The number of applications for registration of improvements since the passing of the Act has not, however, been large.

Enhancement of rent of occupancy-raiyat's holding on account of improvement.

One of the authorized grounds on which an enhancement of the rent of an occupancy-*raiyat's* holding may be claimed by suit is [*see* section 30, clause (*c*), p. 181, *ante*], "that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent"; but such enhancement cannot be granted unless the improvement has been registered under section 80 [*see* section 33, sub-section (*1*), clause (*a*), p. 204, *ante*].

Registration not of itself evidence of improvement.

The registration of an improvement enables the landlord to sue for an enhancement of rent on account of the improvement, but is not in itself any evidence of the value of the improvement,

or of the increase of rent which may be claimed because of it. If a landlord or tenant desires to have evidence recorded relating to an improvement, he may apply under section 81 (p. 367, *infra*) to have such evidence recorded by a Revenue-officer, and the record made will be admissible in evidence in any subsequent proceedings between the landlord and tenant or any person claiming under them.

Local Government Rules for registration of, and for recording evidence of, improvements.

The rules made by the Local Government relating to applications by landlords for registration of improvements, and by landlords or tenants for recording evidence as to improvements, are contained in Chapter III., rules 13 to 19, of the rules framed by the Local Government under section 189 (reprinted in Appendix V. to this work, *infra*). Under rule 16 of those rules, the officer to whom an application for registration of an improvement is submitted has to decide whether the work, which it is sought to register, is an improvement as defined in section 76 (*2*), page 350, *supra*, of the Act; and, if he finds that it is not, it is his duty to refuse to register it.

No rules made as to assessors.

No rules have been made by the Local Government under section 82 (*5*) for requiring the Courts to associate with themselves assessors for estimating the compensation to be awarded for improvements. There have in fact been few claims made for compensation since the Act was passed.

Exclusion of contracts.

Nothing, in any contract between a landlord and tenant made before or after the passing of the Act, can take away or limit the right of a tenant, as provided by the Act, to make improvements, and claim compensation for them—*see* section 178 (*1*), clause (*d*), *post*.

Sections 76, *et seq.*, relating to raiyats' improvements and compensation borrowed from Stat 46 & 47 Vict, c. 61.

The policy of section 76 and the subsequent sections dealing with *raiyats'* improvements and compensation for the same, although modelled on the North-Western Provinces Rent Act, are borrowed from the English Statute, 46 & 47 Vict., cap. 61, entitled "The Agricultural Holdings (England) Act, 1883," which was passed on the 25th August 1883, and came into operation on the 1st January 1884.

Section 76 defines the meaning of the term "improvement" with reference to a *raiyat's* holding, and makes an important change in the law, mostly in favour of the *raiyat*. Sub-section (*1*) is composed of two different elements—(*a*) that the work adds to the value of the holding; and (*b*) that it is suitable to the holding, and consistent[1] with the purpose for which it was let. The work need not be executed *on the holding itself*. So long as it is executed directly for its benefit, or is, after execution, made directly beneficial to it, it is an "improvement" within the meaning of the section. For example, a water-pipe brought from another place to the holding for purposes of irrigation, though not on the holding, would be an improvement; or a tank made in the vicinity of a holding, not primarily for its benefit, but used for that purpose after excavation, would equally be an improvement within the meaning of the section.

Elements of sub-section (1).

Sub-section (2).

Sub-section (*2*) declares a presumption with regard to certain works; in other words, until the contrary is shown, certain works are to be presumed to be improvements within the meaning of the section.

Sub section (3).

Sub-section (*3*) contains an important saving clause to the presumption declared by sub-section (*2*), namely, that no work executed by the *raiyat* of a holding shall be deemed to be an improvement for the purposes of the Act if it substantially diminishes the value of his landlord's property.[1]

Ameliorating waste.

The provisions of this section require careful consideration, especially in connection with the subject of what is called in English Law "ameliorating waste." It is easy for the landlord to allege under sub-section (*3*) that a work executed by the *raiyat*

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[1] In this connection, *see* the two cases—*Hori Mohan Misser* v *Surendra Narain Sing* [1903], I. L. R., 31 Cal 301, and [1907], I. L R., 34 Cal. 718 (P. C.). quoted under s. 155, *post*. In the latter case, the Privy Council approved of the District Judge's findings that the erection of an indigo factory did not impair the value of the land, and was in conformity with the purposes for which an agricultural holding is let, and dissented from a proposition of law laid down by the High Court in overruling these findings of the Distsict Judge. *See*, also, notes to s. 23, p. 151, *ante*.

has substantially diminished the value of his property, or that it is not consistent with the purpose of the holding. The Legislature, however, while making the law sufficiently elastic, has entrusted to the Courts the power of determining the question in the light of certain principles for the benefit of both landlord and tenant.

But to convert land leased for agricultural purposes into building land,[1] or to make excavations for providing earth for bricks,[2] would not be ameliorating waste. The tenant was not entitled under the old law,[3] nor is he entitled under the present enactment, to change the entire character of the land from what it was when he got it, or to make a permanent alteration in the landlord's property. In other words, section 76, while giving the amplest latitude to the tenant to make improvements, and to build a proper habitation for himself on the land, discountenances the improper usage of the land.

Right to build a permanent house.

An occupancy-*raiyat* has a right[4] to erect as a dwelling-house a building consisting of masonry walls with a corrugated iron roof, on the site of his ancestral dwelling-house within the homestead land of the holding; there is nothing in sections 23 and 76 of the Bengal Tenancy Act to prevent him from doing so.

There is nothing in section 76 of the Bengal Tenancy Act to indicate that a suitable dwelling-house of an occupancy-*raiyat*, as described in that section, must be of a temporary description only.[4]

Landlord's acquiescence or laches.

Acquiescence on the landlord's part, or *laches* in enforcing his right, may preclude him from raising any question.[5]

Digging a tank.

But, although the digging of a tank was, under the old law, regarded as altering the character of the holding, and doing

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[1] *Jagat Chunder Roy Chowdhury* v. *Eshan Chunder Banerjee* [1875], 24 W. R. 220.

[2] *Kadumbini Dabee* v. *Nobin Chunder Adukh* [1865], 2 W. R. 157.

[3] *Anand Kumar Mukerji* v. *Bissonath Banerji* [1872], 17 W. R. 416.

[4] *Hari Kisore Barna Sarma* v. *Barada Kisore Acharjya Chowdhuri* [1904], I. L. R., 31 Cal. 1014.

[5] *Tarini Churn Bose* v. *Ramjee Pal* [1875], 23 W. R. 298; *Noyna Misser* v. *Rapikun* [1882], I. L. R., 9 Cal. 609.

permanent damage to the landlord's property,[1] such an act would, under the present law, be treated as ameliorating waste if the tanks were constructed for any of the purposes mentioned in section 76 (*2*), clause (*a*), at page 359, *supra*.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (*1*) Where a *raiyat* holds at fixed rates, or has an occupancy-right in his holding, neither the *raiyat* nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself.

Principle.

(*2*) If both the *raiyat* and his landlord wish to make the same improvement, the *raiyat* shall have the prior right to make it unless it affects another holding or other holdings under the same landlord.

A *raiyat* holding at fixed rates, as well as an occupancy-*raiyat*, possesses an equal right with the landlord to make improvements in respect of the holding in his occupation; and neither the landlord nor the *raiyat* can, "as such," restrain the other from making the improvement "except on the ground that he is willing to make it himself." But, if the *raiyat* wishes to carry out the work, he would have the prior right unless the improvement is of a general nature, and affects another holding or other holdings under the same landlord: in such a case, the landlord would have the prior right.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the *raiyat* and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

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[1] *Monindro Chunder Sircar* v. *Muniruddin Biswas* [1873], 11 B. L. R. (App.) 40.

the Collector may, on the application of either party, decide the question; and his decision shall be final.

See Chapter III. of the Government Rules in Appendix V. (*post*).

Right to make improvements in case of non-occupancy holding.

79. (*1*) A non-occupancy *raiyat* shall be entitled to construct, maintain, and repair a well for the irrigation of his holding with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family with all necessary out-offices; but shall not, except as aforesaid, and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(*2*) A non-occupancy *raiyat*, who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver or cause to be delivered to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Sub-section (1).

Section 79, sub-section (*1*), declares what works may be done by a non-occupancy *raiyat* without the landlord's permission, *viz.*, he is entitled (1) to construct, maintain, and repair a well for the irrigation of his holding, "with all works incidental thereto;" (2) to erect a suitable dwelling-house for himself and his family, with all necessary out-offices. A well constructed under this provision will be an improvement within the meaning of the Act, and the *raiyat* will, on being ejected, be entitled to receive compensation for it (*see* section 82, page 367, *post*).

Sub-section (2).

Sub-section (*2*) applies to improvements other than those mentioned in sub-section (*1*), which the non-occupancy *raiyat* is entitled to make without the landlord's permission. In the

case of other improvements, the *raiyat* is entitled to call upon the landlord to make them; and, upon the landlord's failure to do so, may make them himself. It will be observed that the provisions of sub-section (*2*) open up a vast vista of discussion. Suppose the landlord were to say that the improvement asked for by the *raiyat* is not an improvement, and should not be made, how is the question to be decided? Probably, the only way of obtaining the opinion of the Court would be for the landlord, after the *raiyat* has commenced the work on the alleged failure of the landlord to comply with the *raiyat's* demand, to bring a suit to restrain the *raiyat* from prosecuting the work—a somewhat expensive and harassing process.

Limitation. Article 32 of the First Schedule of Act IX of 1908 would apply in such a case.

Registration of landlord's improvements.

80. (*1*) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

(*2*) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(*3*) The officer receiving the application may reject it if it has not been made within twelve months,—

(*a*) in the case of improvements made before the commencement of this Act,—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act,—from the date of the completion of the work.

Extended to Orissa (June, 1892).

This section must be read in conjunction with section 33, sub-section (*1*), clause (*a*), at page 204, *ante*, which provides that no enhancement on the ground of an improvement made at the expense of the landlord, by which the productive powers of the land have been increased,[1] during the currency of the present rent, can be decreed on that basis unless the improvement has been registered in accordance with the Act.[2]

Section 80 to be read with section 33, sub-section (1), cl. (a).

81. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(*2*) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant, or any persons claiming under them.

See rule 19, Chapter III., Appendix V., *post*.

82. (*1*) Every *raiyat* who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

Compensation for raiyat's improvements.

(*2*) Whenever a Court makes a decree or order for the ejectment of a *raiyat*, it shall determine the amount of compensation (if any) due under this sec-

[1] *See* s. 30, cl. (*c*), at p. 181, *supra*.
[2] *See* rules 13 to 18, Ch. III., in App. V. to this work (*post*).

tion to the *raiyat* for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the *raiyat*.

(3) No compensation under this section for an improvement shall be claimable where the *raiyat* has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a *raiyat* between the second day of March 1883 and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

References. As to ejectment, *cf.* section 18, clause (*b*), at page 113, *ante*, and sections 25, 44, 45, 46, and 49, respectively, at pages 160, 226, 234, and 242, *ante*, and sections 155, 156, and 186A, *post*.

English Law as to compensation. Under the English Law, the tenant becomes entitled to compensation upon the determination of the tenancy, *i. e.*, the cessor of a contract of tenancy by effluxion of time, or from any other cause.

Application of section 82. Under section 82 of the present Act, it is only in cases of non-voluntary cessor that the *raiyat* becomes entitled to compensation for his improvements. The section provides compensation in all cases of ejectment, whether under a decree of

the Court or otherwise. The benefits of this section apply to non-occupancy *raiyats* also.[1]

But, where the *raiyat* makes the improvement in pursuance of a contract or under a lease in consideration of some substantial advantage to be obtained by him, and he has obtained that advantage, he cannot claim any compensation for such improvement: for example, a *raiyat* may obtain a lease on a reduced rental in consideration of clearing or digging a tank; and if, pursuant thereto, he makes the improvement, he would not be entitled to compensation therefor. Other cases of a similar character may easily be conceived.

Cases in which compensation is not claimable.

Nor would a *raiyat* be entitled to compensation if he voluntarily abandons or surrenders his holding. The words of sub-sections (*1*) and (*2*) imply a non-voluntary removal from the holding.

No *raiyat* can contract himself out of his right to claim compensation for an improvement.[2]

Bar to contracts.

In spite of certain *dicta* to the contrary,[3] the right of a non-occupancy *raiyat* to claim compensation for improvements, being a personal right, descends, upon his death, to his heirs, although the right to the holding itself may not be heritable,[3] and, although, as has been held,[4] the heirs may not be entitled to maintain an action for recovering possession of the holding, after re-entry by the landlord, upon the demise of the *raiyat*.

Non-occupancy raiyat's right to claim compensation descends to his heirs.

No rules have been framed under the provisions of sub-section (*5*) of this section.

No rules made under sub-section (5).

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[1] *Lakhan Narain Dass* v. *Jainath Panday* [1907], I. L. R., 34 Cal. 516.
[2] *See* s. 178(*1*), cl. (*d*), *post*.
[3] *Karim Chowkidar* v. *Sundar Bewa* [1896], I. L. R., 24 Cal. 207.
[4] On this point, *see* the notes to s 47, p. 239, *supra*, and the Full Bench case *Lakhan Narain Dass* v. *Jainath Panday* [1907], I. L. R., 34 Cal. 516, in which it was held that the right of a non-occupancy *raiyat* has not been made heritable by the Bengal Tenancy Act; but, if such right were heritable at the time of the passing of that Act, it has not been taken away by it.

Principle on which compensation is to be estimated.

83. (*1*) In estimating the compensation to be awarded under the last-foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value or the produce of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the *raiyat* in consideration of the improvement; and,

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the *raiyat* has had the benefit of the improvement at an unenhanced rent.

(*2*) When the amount of the compensation has been assessed, the Court may, if the landlord and *raiyat* agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of Land for Building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable

and sufficient purpose, having relation to the good of the holding, or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational, or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may he approved by the Court, including full compensation to the tenant.

References.

Cf. section 144, *post.* This section was declared in force in the Sonthal Parganas by Government Notification dated 20th February 1897;[1] but this was cancelled by Notification No. 2568 T.-R., of October 18th 1907, and was replaced by Regulation III. of 1907.

No appeal from order under section 84.

No provision is made in the Act itself for an appeal from an order made under section 84; and, as such an order does not come within the definition of "decree" in section 2 (*2*) of the Code of Civil Procedure (Act V. of 1908), and is not included under the category of appealable orders by section 104 and rule 1 of Order No. XLIII. of that Code, no appeal lies therefrom.[2]

Certificate of Collector.

The certificate of the Collector is not conclusive as to the reasonableness and sufficiency of the purpose for which the lands were sought to be acquired, nor is the jurisdiction of the Civil Court confined to giving effect to the Collector's certificate, and merely assessing the compensation on the production of the

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[1] No. 771 L.-R. published in the *Calcutta Gazette* of 24th February 1897, Pt. I., p. 281; re-printed in Appendix I. to this work, *infra.*

[2] *Goghun Mollah* v. *Rameshur Narain Mahta* [1891], I. L. R., 18 Cal. 271; *Peari Mohun Mukerjee* v. *Baroda Churn Chucherbutty* [1892], I. L. R., 19 Cal. 485.

certificate, and on being satisfied that the lands were really wanted for the purpose certified under the section.[1]

Procedure upon an application for acquisition.

There must first be an application; upon that application the Court has to go through a certain judicial process. It must be satisfied (1) that the landlord is desirous of acquiring the holding or part thereof; (2) that the purpose for which he is so desirous is reasonable and sufficient; (3) that the purpose aforesaid has relation to the good of the holding or of the estate; and (4) that the Collector is also of the same opinion that the purpose is reasonable and sufficient. When it has found these facts, it may proceed to authorize the acquisition of the lands upon such conditions as it may think fit. Even then it is discretionary with the Court to make the order for compulsory acquisition or not. The words "on being satisfied on the certificate of the Collector," &c., cannot possibly be supposed to cut down all that had gone before. The words "on being satisfied" are repeated in the third clause from the collocation of the preceding words and the necessity for making it clear that the Court must also have before it the opinion of the Collector that the purpose is reasonable and sufficient; and the certificate is to be the evidence of that opinion. The Collector's certificate is thus a *sine qua non* to obtaining an order from the Civil Court. The landlord may apply before obtaining a certificate, but no order can be made under section 84 unless the Court is satisfied that the Collector is of opinion also that the purpose is reasonable and sufficient. The section, thus construed, does not do violence to the language, and keeps in view the policy, of the Tenancy Act. To make the Collector's certificate conclusive would, as has been already pointed out by Mr. Justice PRINSEP, be not only contrary to the policy of the Act, but disastrous to the tenants. Remembering what the effect of these compulsory acquisitions would be, that they would withdraw *raiyati* lands from that category, and make them the *khas* lands of the *zamindar*, and remembering how carefully the Legislature has endeavoured to prevent the destruction of *raiyats'* holdings, under whatever disguise attempted, we can well understand the anxiety of the Legislature to provide a double safeguard against such compulsory alienations of *raiyati* lands. It has provided a judicial inquiry as to the sufficiency and reasonableness of the purpose, guarded by the opinion of the executive head of the district to the same effect. That this opinion is not hypothetical is borne out by the words of the Final Report of the Select Committee—"We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court, and at a price

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[1] *Goghun Mollah* v. *Rameshur Narain Mahta* [1891], I. L. R., 18 Cal. 271.

to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable, or educational objects. The necessity of some such power, especially with a view to provide building sites either for new tenants, or in cases of diluvion, has been strongly urged upon us. *We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.*[1]

The purpose must have a direct relation to the good of the particular holding, or the holdings in general of which the estate is composed. Lands may be wanted for constructing drainage or irrigation works, or for sinking wells or cutting pynes, or housing tenants, and such objects are within the Act. Objects which might have a remote or speculative bearing upon the estate seem to me to be foreign to the scope of the Act.[2]

The appointment of a European Manager, and the necessity for erecting buildings for his comfort and convenience, are insufficient grounds for authorizing the compulsory acquisition of land under the section.[2]

But it is not a reasonable and sufficient ground that, by such acquisition, the revenue would be increased.[3]

A person who is not the immediate landlord cannot make an application under this section.[3] **Who may apply.**

Sub-letting.

Restrictions on sub-letting.

85. (*1*) If a *raiyat* sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(*2*) A sub-lease by a *raiyat* shall not be admitted to registration if it purports to create a term exceeding nine years.

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[1] *Goghun Mollah* v. *Rameshur Narain Mahta* [1891], I. L. R., 18 Cal. 271 (at pp. 288, 289).

[2] *Ibid* (*see* p. 289).

[3] *Narain Mahtun* v. *Braja Bihari Singh* [1905], 9 C. W. N. 472.

(*3*) Where a *raiyat* has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

References.

Cf. section 108, clause (*j*), of the Transfer of Property Act (IV. of 1882). *Cf.* also sections 121, proviso (*3*), 136, sub-section (*5*), 138, and 178, sub-section (*3*), clause (*e*), of the present Act, *post*.

Object of section 85.

The express object of the present section is to impose certain restrictions on sub-letting by *raiyats*. But, by implication, the effect of the enactment is to recognize the right of a *raiyat* to sub-let his land; and the right is not confined to any particular class of *raiyats*. The section implies that the landlord's consent is unnecessary if the sub-lease, embodied in a duly-registered document, is for a term not exceeding nine years.[1]

Sub-letting by under-raiyats.

The section expressly refers to *raiyats* including non-occupancy *raiyats*, and there is nothing to show that it was ever intended to apply to under-*raiyats*, who form a class by themselves [*vide* section 4, clause (*3*), page 80, *ante*]. The validity of a sub-lease created by an under-*raiyat* must depend, therefore, on totally different considerations. And an analysis of the provisions relating to distraint (Chapter XII., *post*) would give rise to the inference that the custom of sub-letting by under-*raiyats* was not lost sight of by the Legislature, for, in sections 121 and 136, the general term "tenant," which includes an under-*raiyat*, is made use of.

The old law.

Under the old law, a *raiyat* with a right of occupancy could sub-let his land without incurring forfeiture of his tenancy,[2] but

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[1] *Karim* v. *Sundar Bewa* [1896], I. L. R., 24 Cal. 207.

[2] *Kally Kishore Chatterjee* v. *Ram Charan Shaha* [1868], 9 W. R. 344; *Haran Chandra Pal* v. *Mukta Sundari* [1868], 10 W. R. 113: 1 B. L. R. (A. C.) 81; *Jamir Ghasi* v. *Gonai Mandal* [1869], 12 W. R. 110: 13 B. L. R. 278 (note); *Khoshal Mohamed* v. *Joynoodeen* [1869], 12 W. R. 451.

he could not, by sub-letting, alter the character of his holding[1] or make himself a "middleman."[2] Where a *raiyat* with a right of occupancy granted a *mukarrari* lease to another person, it was held[3] binding as between the contracting parties only, and did not affect the rights of the landlords. Where the landlord, however, gave the *raiyat* power to sublet, the lessee was held[4] to have obtained rights, against both the landlord and the *raiyat*, of which he could not be deprived without his own consent. It was further held[5] that the *jamai* rights of a *korfa* under-tenant were not transferable without the consent of the landlord. Where a sub-lease specified no term of tenancy, it could not be construed to have a larger effect than the interest of the grantor.[6] The lessees had no more right to use the land in contravention of the terms of the original lease than their lessor had;[7] nor could a farmer or leaseholder use the land to the prejudice of the owner.[8]

The present law.

These principles, generally speaking, are applicable to sub-leases under the present law, subject to such qualification as may be necessary from the provisions of sections 85 and 183. As stated already, under this section all *raiyats* are entitled to sub-let; but, in order that the sub-lease may be valid *against the landlord*, it must comply with two conditions—(1) it must be by a registered instrument, and (2) it must not be for a term exceeding nine years. If it purports to create a term exceeding nine years, it will not be admitted to registration. *See* Rule 3, Appendix VI., *post* (Registration Department Rules).

Effect of the death of the lessor.

But, where a sub-lease is granted by a non-occupancy *raiyat*, and the lessor dies during the subsistence of the term,

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[1] *Ram Mangal Ghosh* v. *Lakhi Narain Shaha* [1864], 1 W. R. 71; *Karoo Lall Thakur* v. *Lachmipat Doogur* [1867], 7 W. R. 15.

[2] *Durga Prosonno Ghosh* v *Kali Das Datta* [1881], 9 C. L. R. 449.

[3] *Damri Shaikh* v. *Bissesswar Lall* [1870] 13 W. R. 291.

[4] *Nihaloonessa* v. *Dhanu Lal Chowdhry* [1870], 13 W. R 281.

[5] *Bonomali Bajadar* v. *Kaylash Chunder Mojoomdar* [1878], I. L. R., 4 Cal. 135.

[6] *Hurish Chunder Roy Chowdhry* v. *Sree Kali Mukerji* [1874], 22 W. R. 274.

[7] *Monindro Chandra Sarkar* v. *Moniruddin Biswas* [1873], 20 W. R. 230.

[8] *Ranee Shurut Sundori Debia* v. *Charles Binny* [1876], 25 W. R. 347 S. C., 3 C. L. R. 140 L. R., 5 I. A. 164.

the sub-lease is terminated by his death.[1] This is natural when it is found that the right of the non-occupancy *raiyat* is not heritable. In the case of a sub-lease created by an occupancy-*raiyat*, it will enure for the full term of nine years, and would not be affected by the death of the lessor in the interval.

Leases when void as against the landlord.

Where a sub-lease is created for a term exceeding nine years, the mere fact, that the instrument has been registered, will not validate it; if granted without the consent of the landlord, although created by a registered instrument, it will be altogether void.[2] It is equally void if the sub-letting was otherwise than by a registered document.[3] And a landlord purchasing the holding in execution of a decree for arrears of rent would be entitled to eject the *raiyat* without following the procedure prescribed by section 167, *post*.[4] In other words, both the conditions must be complied with in order to enable the sub-lessee of a *raiyat* to acquire a valid title under section 85 against the landlord.

Rights of landlord.

Where the under-*raiyat* is not protected under section 85, the landlord is entitled, upon the surrender of the holding by the *raiyat*, to re-enter upon the land by ejectment of the under-*raiyat*; and, in such a case, no notice to quit is necessary.[5]

Position of sub-lessee.

Where an occupancy-*raiyat* executed a permanent registered lease in favour of another, and put him in possession, and subsequently his right, title, and interest were sold in execution

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[1] *Karim Chowkidar* v. *Sundar Bewa* [1896], I. L. R., 24 Cal. 207: S. C., 1 C. W. N. 89. But *see* notes (3) and (4) at the foot of p. 369, *ante*.

[2] *Srikant Mandul* v. *Saroda Kanto Mandal* [1898], I. L. R., 26 Cal. 46.

[3] *Peary Mohun Mukerji* v. *Badul Chandra Bagdi* [1900], I. L. R., 28 Cal. 205: S. C., 5 C. W. N. 310. *See* also p. 244, *ante*, foot-note 1

[4] *Peary Mohun Mukerji* v. *Badul Chandra Bagdi* [1900], I. L. R., 28 Cal. 205: S C., 5 C. W. N. 310 (distinguished in *Amirulla* v. *Nasir Mahomed*, 3 C. L. J. 155). *See* p. 244, *ante*, foot-note (1), and notes to s. 167, *post*.

[5] *Nilkanta Chaki* v. *Ghatoo Sheikh* [1900], 4 C. W. N. 667. *See* also *Peary Mohun* v. *Badul Chandra* [1900], I. L. R., 28 Cal 205. But, in *Amirulla* v. *Nasir Mahomed* (3 C. L. J. 155), it was held that a notice to quit was necessary. In that case the *raiyat* sold his occupancy-right to the landlord behind the back of his under-tenant. *See* notes on s. 167, *post*, and compare s. 86 (6) *post*.

of a decree for money, it was held[1] that the purchaser, in bringing a suit for ejectment against the tenant, was not estopped from questioning the validity of the permanent lease created by his predecessor in title; and that, as the permanent lease was registered contrary to the provisions of section 85 (*2*) of the Bengal Tenancy Act, it must be regarded as unregistered and void under section 17 of the Registration Act. It was further held that, although the written lease was void under the law, yet, inasmuch as the tenant had been put in possession of the land in good faith, and as an under-*raiyat*, he could not be regarded as a trespasser, but must be taken as an under-*raiyat* holding otherwise than under a written lease; and, as the tenancy was subsisting, he could not be evicted except after service of notice under section 49 of the Bengal Tenancy Act, and he could prove his tenancy-right *aliunde* without proving his lease, if he had one, which was inadmissible for want of registration.

Leases void as against the landlord may be valid as against the 'essor.

When the sub-lease does not fulfil the conditions above stated, it is void only as against the landlord; but non-compliance with the requirements of section 85 does not render it inoperative or unenforceable in law as between the contracting parties. This is clear from the phraseology of sub-section (*1*), which expressly declares that such a sub-lease shall not be valid against the landlord.

By some inadvertence, the words "against the landlord" were omitted, at the time of drafting, from sub-section (*3*), and it was contended that, whereas sub-leases granted *dehors* the provisions of the section after the commencement of the Act were invalid only against the landlord under sub-section (*3*), sub-leases granted without the consent of the landlord before the commencement of the Act would not be valid at all for

[1] *Fazal Sheikh* v *Keramuddi* [1902], 6 C. W. N. 916. Followed in *Banka Behary* v *Raj Chandra Pal* [1910], 14 C. W. N. 141. But this was held to be inapplicable in *Tamisudi* v. *Asgar Howladar* [1909], I. L. R., 36 Cal. 256. *See* p. 379, *infra*, foot-note (1).

more than nine years from the commencement of the Act. In other words, that, at the end of nine years from the commencement of the Act, such sub-leases would be ineffective and invalid, not only against the landlord, but also as against the lessor. The Calcutta High Court has held[1] this contention to be wholly unwarranted:—

This section, like some others, bears evident marks of compromise, and, consequently, of somewhat hasty drafting. Sub-section (*1*) deals with sub-leases granted after the Act has come into force. It provides that, if a sub-lease is granted otherwise than by a registered instrument it shall not be valid *against the landlord*, unless made with his consent. Sub-section (*3*) refers to sub-leases granted before the commencement of the Act. Sub-section (*2*) has no connection with sub-section (*3*), as it necessarily deals with sub-leases granted after the passing of the Act; for it directs that no sub-lease should be admitted to registration if it purports to create a term exceeding nine years. It is contended that sub-section (*3*) must also be read with the light of sub-section (*2*), and that, if this is done, it will show that the intention of the Legislature was, that sub-leases granted before the commencement of the Act, without the consent of the landlord, should be absolutely invalid against the whole world, and not merely as against the landlord. If this contention be correct, the result would be that a *raiyat*, who has obtained any benefit under the lease in the shape of a bonus, would be entitled to retain the same, although the lease, in consideration of which he has received the same, will be set aside at the end of nine years.

The District Judge himself considers that, if sub-section (*3*) of section 85 is construed as he reads it, it would operate more harshly than the provisions of sub-section (*1*). We also think that, if the construction contended for on behalf of the plaintiff is given effect to, under-*raiyats* whose sub-leases had been granted prior to the commencement of the Act would be placed in a far worse position than those who had acquired their sub-leases after the Act came into force. An under-*raiyat* taking a sub-lease for more than nine years after the commencement of the Act is put upon his guard by the refusal of the Registrar to register the document; if he has paid any consideration for such sub-lease, he is enabled by the refusal of registration to recover the same from the

[1] *Gopal Mondal* v *Eshan Chunder Banerji* [1901], I. L. R., 29 Cal. 148.

lessor. But an under-*raiyat* who had taken a lease before the Act is in a very different position: he paid the bonus upon a contract which, when entered into, was perfectly valid in law. And, if the Act *ipso facto* put an end to such a sub-lease at the end of nine years, the under-*raiyat* has no remedy against his lessor. Having regard to the consequences that would result from such an extreme construction of sub-section (*3*), and also the fact that, in the interpretation of Statutes, the Court must not impute to the Legislature a desire to confiscate or to do away with rights which have already been lawfully created, or which have lawfully vested, we are not prepared to agree with the opinion of the learned District Judge that the object of the Legislature was to sweep away, after the expiration of nine years from the date the Act came into force, all sub-leases granted by *raiyats* before the Act if made without the consent of the landlord. There is certainly nothing in the law itself or in general principles to suggest that the Legislature intended to relieve grantors from their contracts. To give effect to the view expressed by the District Judge would be to allow frauds of a very gross character to be perpetrated by *raiyats*. They will be enabled to come forward under the authority of the law, and ask that sub-leases deliberately granted by them may be declared invalid on the expiration of nine years from the commencement of the Act, without any commensurate return of the benefit they might have received. Such a construction, to our mind, does not seem to be warranted by the law. In our opinion sub-section (*3*) invalidates sub-leases granted before the Act without the consent of the landlord, as against the landlord, after the expiration of nine years from the passing of the Act.

This view was followed in subsequent cases, and it has been held[1] that, as long as the interest of the tenant from year to year is not put an end to, the superior landlord has no right to eject the sub-lessee who is not his raiyat, and the sub-lessee can maintain a suit for possession of the land from which he is dispossessed by the superior landlord and a tenant of his, who is not the

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[1] *Tamisuddin* v. *Asgar Howladar* [1909], I. L. R., 36 Cal. 256. (*Gopal Mondal* v. *Eshan Chandra Banerji* [1901], I. L. R., 29 Cal 108, and *Madan Chandra Kapali* v *Jaki Karikar* [1902], 6 C. W. N. 377 explained and followed; *Srikant Mandal* v *Saroda Kant Mandal* [1898], I. L. R., 26 Cal. 46, *Fusel Shaikh* v. *Keramuddi* [1902], 6 C. W. N. 916, *Ramgati Mondal* v. *Shyama Charan Datta* [1902], 6 C. W. N. 919, and *Basaratulla Mondal* v *Kasirunessa Bibi* [1906], 11 C. W. N. 190, held inapplicable.) *See* also 14 C. W. N., pp. cxxvii. and cxxxiv., for a very full discussion of the legal position of under-*raiyats*.

lessor of the plaintiff. But it has also been held[1] that a sub-lease by a *raiyat* for a term exceeding nine years is invalid against the grantor even.

Distraint of produce of holding sub-let.

Under section 121, proviso (*3*), *post*, a landlord cannot distrain the produce of any part of a holding which the tenant has sub-let with the written consent of his landlord. But this is qualified by the provisions of section 136, sub-section (*5*), *post*, which declares that a landlord is not to be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely because he has received an amount deposited by an inferior tenant to obtain the release of property from distraint.[2]

Bar of contracts.

Under section 178, sub-section (*3*), clause (*e*), *post*, nothing contained in any contract made after the passing of this Act can take away the right of an occupancy-*raiyat* to sub-let subject to, and in accordance with, the provisions of this Act.[3]

Registration-rule.

To give effect to the provisions of sub-section (*2*) of section 85, which prohibits the admission to registration of a sub-lease by a *raiyat* "if it purports to create a term exceeding nine years," the Registration Department has framed the following rule (*see* rule 3, Appendix VI., *infra*) :—

If any sub-lease executed by a *raiyat*, and purporting to create a term exceeding nine years, is presented for registration, it shall be returned at once without registration with a note to the following effect recorded on its back, *viz.*, Inadmissible: *see* section 85 (*2*) of the Tenancy Act

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[1] *Basaratulla* v *Kasirunessa* [1906]. 11 C. W. N 190.

[2] *See* also s. 138, *post*, which provides that, when any land is sub-let, and a conflict arises between the rights of a superior and an inferior landlord distraining the same property, the right of the superior landlord shall prevail

[3] S. 55 of the Agricultural Holdings (England) Act, 1883, Stat 46 & 47 Vict, c. 61, declares that "Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the First Schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity."

Surrender and Abandonment.

86. (*1*) A *raiyat* not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding. Surrender.

(*2*) But, notwithstanding the surrender, the *raiyat* shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) When a *raiyat* has surrendered his holding, the Court shall, in the following cases, for the purposes of sub-section (*2*), presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the *raiyat* takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the *raiyat* ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(*4*) The *raiyat* may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(*5*) When a *raiyat* has surrendered his holding, the landlord may enter on the holding, and either let it to another tenant, or take it into cultivation himself.

(*6*) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(*7*) Save as provided in the last-foregoing sub-section, nothing in this section shall affect any arrangement by which a *raiyat* and his landlord may arrange for a surrender of the whole or a part of the holding.

References.

Cf. section 19 of Act X. of 1859 and section 20 of Bengal Act VIII. of 1869.

Bar of contracts.

Section 178, sub-section (*3*), clause (*c*), *post*, provides that "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of a *raiyat* to surrender his holding in accordance with section 86." A *raiyat* "not bound by a lease or other agreement for a fixed period" has the power, at the end of any agricultural year, to surrender his holding. That power cannot be taken away by any contract, but it can only be exercised subject to the conditions laid down in this section.

No surrender during continuance of fixed period.

Where, however, the tenancy is for a fixed period, the *raiyat* cannot surrender his holding during its continuance. This rule gives statutory effect to what is laid down under the old law.[1] In order to debar the *raiyat* from exercising his right to surrender, the tenancy must be for a determinate period.

Right to surrender is confined to the actual cultivators of the soil.

A contract by which a *raiyat* binds himself and his representatives to hold the land in perpetuity was held[2] to be invalid under the old law, and is clearly illegal under the present enactment. Section 86 applies only to *raiyats*, and

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[1] *Kashi Singh* v. *Onraet* [1866], 5 W. R. (Act X. Rulings) 81.
[2] *Gapal Pal Chowdhry* v. *Tarini Pershad Ghose* [1868], 9 W. R. 89.

expresses the view enunciated in a number of cases under the old law that the right to surrender their holdings was confined to actual cultivators of the soil, *e. g.*, *patnidars* could not throw up their *patni*, for the contract, though not indissoluble, could only be dissolved by an act of the Court after proper inquiry;[1] and where a tenure had been created, under a *dar-maurasi mukarrari* lease, of land which was not let for agricultural purposes, it could not be put an end to by mere relinquishment on the part of the lessee, even after notice to the landlord.[2]

Changes made by present Act.

Section 86 of the Bengal Tenancy Act has effected several important changes in the law relating to the right of the *raiyat* to surrender his holding.

Written notice.

Under section 20 of Bengal Act VIII. of 1869, the *raiyat* was bound to give notice in writing of his intention to surrender. A verbal notice was accordingly held to be insufficient except in the case of an *utbandi raiyat*.[3] The notice was to be given, in districts or parts of districts where the *Fusli* year prevails, in or before the month of *Jeyt*; and, in districts or parts of districts where the Bengali year prevails, in or before the month of *Pous*, of the year preceding that in which the relinquishment was to have effect. Under the present law it has been held[4] that the notice need not be in writing. And the *raigat* has the option of causing the notice to be served through the Civil Court within the jurisdiction of which the holding "or *any portion* of it" is situate.

Time of giving notice.

In the second place, instead of a varying rule regarding the time when the notice should be served, the present law enacts that the *raiyat* should give to the landlord, "at least

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[1] *Hira Lal Pal* v. *Nilmoni Pal* [1873], 20 W. R. 383.

[2] *Judonath Ghose* v. *Schoene, Kilburn, & Co.* [1883], I. L. R., 9 Cal. 671 : 12 C. L. R. 343.

[3] *Bonomalee Ghose* v. *Debi Sirdar* [1875], 24 W. R. 118.

[4] *Khunkar Abdur Rahaman* v. *Ali Hafes* [1900], 5 C. W. N. 351. The rule framed by Government to give effect to the provisions of s. 86, subss. (2) and (4), is to be found in App. V., Ch. V., Rule 36, *infra*.

three months before he surrenders," notice of his intention to surrender.

Raiyat's liability when no notice given.

Under the old law, if a *raiyat* failed to give the notice as provided in section 20 of Bengal Act VIII. of 1869, and the land was not let to any other person, he continued to be liable for the rent of the land Evidently his liability continued until the land was let. Under section 86, if he fails to notify the intention to surrender at least three months before he actually surrenders, he is liable to indemnify the landlord against any loss of the rent of the holding "for the agricultural year next following the date of the surrender."

Presumptions as to notice having been given.

Again, the present law provides certain presumptions in favour of the fact that notice was given to the landlord—important provisions, the absence of which caused serious hardship under the old Act.

Presumption from landlord's letting the land to others.

Besides the presumptions provided for in section 86, the fact, that the landlord lets the land to other persons, would be evidence of a knowledge on the part of the landlord of the *raiyat's* intention to surrender. Under the old Act, which required a notice in writing, it was held[1] that such letting would absolve the *raiyat* from the liability to pay rent, although he might not have given actual notice of relinquishment. It would *à fortiori* be so under the present law. Where no notice has been given, and the elements which give rise to the statutory presumption are wanting, and the defence is based on the allegation that the landlord has taken possession of the land or let it to others, the *onus* is on the *raiyat*.[2]

Effect on co-sharers of surrender by person jointly entitled to holding.

Difficult questions often arise as to how far a surrender by a person who is entitled to a holding jointly with others affects his co-sharers. Under the old law, it was held[3] that, where a

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[1] *Mahomed Ghasi* v. *Sankar Lall* [1869], 11 W. R. 53.
[2] *Erskine* v. *Ram Kumar Roy* [1867], 8 W. R. 221.
[3] *Boikonto Nath Dass* v. *Bissonath Majhee* [1868], 9 W. R. 268.

member of a joint family was registered as *jotedar* in the *zemindar's serishta*, not for himself only, but as manager for the family, his relinquishment of the holding was not sufficient to authorize tne *zemindar* to treat it as a surrender by all, and to make a settlement of the land with others. This principle would clearly be applicable under the present enactment.

A relinquishment made in favour of the landlord by some of several co-sharer tenants of a joint occupancy-holding does not operate so as to enlarge the right of the other co-sharers who did not relinquish, or so as to deprive the landlord of what ordinarily would belong to him.[1]

When notice of surrender required.

Notice of surrender is required only during the continuance of the tenancy. Where the *raiyat* holds the land under a lease, he can, upon its termination, give up the land without giving a notice of relinquishment to the landlord. This view was expressed under the old law,[2] and would appear to be applicable to cases arising under the present Act. The rule as to service of notice of surrender is given in Appendix V., Chapter V., Rule 36, *infra*. Personal service is not required.[3]

Part of a holding cannot be surrendered.

Although the *raiyat* is entitled to surrender his holding under the conditions laid down in section 86, the surrender must be of the entire holding. He cannot surrender a part, and retain a part. This is clear from the phraseology of the section; the Legislature has here again adopted the views expressed by the Courts under the old law.[4]

Sub-section (6).

Sub-section (*6*) is an important provision, and was deliberately framed to guard against frauds on the part of *raiyats* against third parties in collusion with landlords.[5] An 'incum-

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[1] *Peary Mohun Mondal* v. *Radhika Mohun Hasra* [1903], 8 C. W. N. 315.
[2] *Tilak Patak* v. *Mahabir Pande* [1871], 15 W. R. 454.
[3] *Khirod Chandra* v. *Hosan Ali* [1902], 6 C. W N xxviii.
[4] *Saroda Sundori Debi* v. *Hasi Mohamed Mandal* [1866], 5 W. R. (Act X.) 78; *Anarullah Shaikh* v. *Kaylash Chunder Bose* [1881], I. L. R., 8 Cal. 118. But *see*, contra, *Habila Sarkar* v. *Durga Kanto Mosumdar* [1869], 11 W. R. 456.
[5] *See* Selections, p 386.

brance' must imply a limitation of the rights of the tenant, and not a total extinction of them. Hence a sale of *part* of a non-transferable occupancy-holding is not an 'incumbrance' within the meaning of section 86 (*6*), as it implied a total extinction of the tenants' interest in the part sold.[1] Here again the Legislature has given effect, in a wider and more general manner, to the principle enunciated under the old law, *viz.*, that a tenant holding for a term and sub-letting his land could not, by surrendering his own term to the landlord, determine the interests of his under-tenant.[2] *See* section 85 (page 373, *ante*) on sub-letting.

Definition of "incumbrance."

Sub-section (*6*) is not confined to the rights of an under-tenant. It protects all "incumbrances." The term "incumbrance," as used with reference to a tenancy, is defined in section 161, clause (*a*), *post*, for the purposes of Chapter XIV. (Sale for Arrears under Decree), as meaning "any lien, sub-tenancy, easement, or other right or interest created by the tenant on his tenure or holding, or in limitation of his own interest therein," and not being a "protected interest" as defined in the last-foregoing section. A sale of a portion of a non-transferable occupancy-holding is not an "incumbrance" within the meaning of these sub-sections,[3] (*6*) and (*7*).

Validity of surrender by raiyat who has created an incumbrance secured by registered instrument.

So that, if a *raiyat* creates a charge or mortgage, or a sub-lease, or any other kind of right or interest in derogation of his own interest, and such "incumbrance" is secured by a registered instrument, a surrender by the *raiyat* will not be valid unless made with the consent of the landlord, *as well as of the incumbrancer*. Where the incumbrancer is not protected as provided under this sub-section (*6*), that is, when his interests are not secured by a registered instrument, the surrender is of no

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[1] *Tamisudin* v. *Khoda Newas* [1910], 14 C W. N. 229 (distinguishing *Jogeshwar Masumdar* v. *Abed Mahomed* [1896], 3 C. W. N. 13).
[2] *Hiramoni* v. *Ganga Narain Roy* [1868], 10 W. R. 384.
[3] *Tamisudin* v. *Khoda Nawas* [1910], 14 C. W. N. 229.

effect against the landlord. And, in case the land is let to an under-*raiyat*, the landlord would, under these circumstances, be entitled to re-enter by ejecting him, and no notice to quit would be necessary.[1]

Under clause (xii), section 19, Act VII. of 1870 (the Court Fees Act), applications for service of notices of relinquishment are exempt from Court-fees. **Court-fees.**

87. (*1*) If a *raiyat* voluntarily abandons his *residence* without notice to his landlord, and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding, either by himself, or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the *raiyat* so abandons and ceases to cultivate, enter on the holding, and let it to another tenant, or take it into cultivation himself. **Abandonment.**

(*2*) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned, and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(*3*) When a landlord enters under this section, the *raiyat* shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy *raiyat*, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the *raiyat* did not voluntarily abandon his holding, order recovery of possession on such terms,

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[1] *Nilhanta Chaki* v. *Ghatoo Sheikh* [1900], 4 C. W. N. 667.

if any, with respect to compensation to persons injured and payment of arrears of rent, as to the Court may seem just.

(*4*) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering, under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease, at the rent paid by the *raiyat* who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that *raiyat*. If the sub-lessee refuses or neglects within a reasonable time to except the offer, the landlord may avoid the sub-lease, and may enter on the holding, and let it to another tenant, or cultivate it himself as provided in sub-sections (*1*) and (*2*).

Principle.

Section 86 dealt with surrenders by *raiyats* of their holdings; section 87 provides for cases of *abandonment*, and secures to the landlord the right of re-entering upon the land, and letting it to another tenant, or taking it into his own cultivation.

Elements of abandonment.

What amounts to an abandonment is a question of fact, and must depend on the special circumstances of each case. But the Legislature lays down three distinctive conditions as guiding principles in the consideration of the question, namely, that the *raiyat* (1) abandons his *residence without notice to the landlord*, and (2) does not arrange for payment of his rent as it falls due, and (3) ceases to cultivate his holding, either by himself, or by some other person. If any of these elements be wanting, there is no *abandonment*, and the landlord cannot re-enter.[1]

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[1] See *Madar Mandal* v. *Mohima Chandra Masumdar* [1906], I. L. R., 33 Cal. 531 (*Nerendra Narain Roy* v. *Ishan Chandra Sen* [1874], 22 W. R 22; and *Dwarka Nath Misser* v. *Hurrish Chandra* [1879], I. L. R., 4 Cal. 925, referred to). *See* also note 2 and note 4 on p. 391, *post*

What is abandonment.

The cultivation of the land and the payment of rent are two of the common incidents of a *raiyati* tenancy; and, when a *raiyat* does neither, and, without giving notice to the landlord, departs from the residence he has occupied, that is evidence of his severing his connection so as to justify the landlord in re-entering.

Accordingly it was held[1] under the old law that, upon a re-entry by the landlord under these circumstances, the *raiyat* had no right to ask to be reinstated on the ground that he had never formally relinquished the land.

What is not abandonment.

But partial or temporary non-cultivation is no evidence of abandonment.[2] Nor is mere omission to pay rent.[3] Mere non-payment of rent by an occupancy-*raiyat* does not extinguish the tenancy, or constitute an abandonment.[4] Non-payment of rent by occupancy-*raiyats*, while their lands are under water, does not furnish any ground for supposing that they have abandoned their holdings if there are facts present to show that it was their intention to resume the occupation of their holdings on re-appearance.[5]

Transfer of part of holding.

Under the old law, it was held[6] that, even where the occupancy-*jote* was transferable, the *raiyat* could not transfer different parts of the holding to different persons, and, in case of such

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[1] *Chandra Mani Nyabhishan* v. *Shambhu Chandra Chackraverty* [1864], W. R., Sp. No, 270; *Maniruddin* v. *Mohammed Ali* [1866], 6 W. R. 67; *Harihar Mookerjee* v. *Jodunath Ghosh* [1867], 7 W. R. 114; *Nuddear Chand Poddar* v. *Modhu Sudan Dey Poddar* [1867], 7 W. R. 153; *Huro Das* v. *Gobind Bhuttacharjee* [1869], 12 W. R. 304: 3 B. L. R. (App.) 123; *Mutty Sunar* v. *Gundar Sunar* [1873], 20 W. R. 129; *Ram Chang* v. *Gora Chand Chang* [1875], 24 W. R. 344; *Boidya Nath Manjhi* v. *Aupurna Debi* [1881], 10 C. L. R. 15; *Golam Ali Mondal* v. *Golap Sundari Dasi* [1882], I. L. R., 8 Cal. 612: S. C., 10 C. L. R. 499.

[2] *Radha Madhub Pal* v. *Kali Churn Pal* [1872], 18 W. R. 41, where a small portion of an ancestral *jote* was not cultivated for some time owing to the minority of the holders.

[3] *Musyatullah* v. *Noorsahan* [1883], I. L. R., 9 Cal. 808: S. C., 12 C. L. R. 389.

[4] *Obhoya Charan Bhooia* v. *Koilash Chunder Dey* [1887], I. L. R., 14 Cal. 751.

[5] *Ismail Chowdry* v. *Bhagabati Barmanya*, appeal from original decree, 303 of 1897, decided 25th June 1900, where the decision in *Hemnath Dutt* v. *Asghar Sirdar* [1879], I. L. R, 4 Cal 894, is examined and dissented from, and the case of *Mashar Rai* v. *Ramgal Singh*, in I. L. R., 18 All. 290, is approved.

[6] *Thirthanund Thakur* v. *Mutty Lall Misra* [1878], I. L. R., 3 Cal. 774.

a transfer or transfers, the landlord could treat the transferees as trespassers, and eject them. This principle would be applicable to transfers under the present law. For the *raiyat* has no right to split up his holding without the consent of the landlord (section 88, *post*): and, if, after doing so, he departs from the land, or gives up his occupation, it would be tantamount to abandonment.

Where the right is clearly not transferable without the consent of the landlord, a sale of the holding, coupled with the *raiyat's* quitting the land, and ceasing to cultivate or hold it, was regarded under the old law as abandonment; and the landlord was held[1] to be justified in recovering the land from the transferee.

Sale of holding.

Under the present law, also, the question of abandonment depends on the fact whether the *raiyat* has quitted the land, and ceased to hold or cultivate it. If it be found that he has sold his holding, and abandoned its possession, the landlord would be entitled to eject his transferee.[2] It makes no difference whether the sale was voluntary or *in invitum*, viz., a sale in execution of a decree.[3] And this would be the case even if the *raiyat* sold the holding for the purpose of raising money to satisfy a decree for arrears of rent, in execution of which the *jote* was advertised for sale, and even if the money was actually paid into Court by the *raiyat* with a statement that he had raised the amount by the sale of his holding, and it was drawn out by the landlord, unless the latter was cognizant of the circumstances under which the money was obtained, or of the contents of the *raiyat's* petition, from which it might be inferred that he had acquiesced in the manner in which, or agreed to the source from which, the judgment-debtor had obtained the money.[2]

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[1] *Nurendro Narain Roy* v. *Ishan Chunder Sen* [1874], 22 W. R. 22: S. C., 13 B. L. R. 274; *Ram Chander Roy Chowdhuri* v. *Bholanath Lushkur* [1874], 22 W. R. 200.

[2] *Robert Wilson* v. *Radha Dulari Koer* [1897], 2 C. W. N. 63.

[3] *Dwarka Nath Misser* v. *Hurrish Chunder* [1879], I. L. R., 4 Cal. 925.

But if the sale was not meant to be operative, but was a mere proper transaction (not necessarily collusive), there would be no abandonment.[1]

Lease of holding.

But it is not abandonment if the *raiyat*, after selling his holding, remains on the land as a sub-lessee or *burgadar*[2] under the purchaser.

It is evident that it is essential to such a case that the owner of the land, *i. e.*, the *raiyat*, must have abandoned it altogether; as, if he has not, he is the person entitled to possession of it; and it is of course not sufficient, to enable him to succeed, for the *zamindar* to prove that the person who is cultivating the land has no title to it; he must show that the *raiyat's* interest has ceased.[3]

This view prevails, even if the right of occupancy is not transferable,[4] but not if the raiyat (vendor) repudiates his tenancy under the landlord, and allows only to the vendee.[5]

Transfer of holding.

In one case the facts found were as follow: The original tenants had entirely transferred their rights to other persons, some of whom were in possession of the tenures upon payment of rent to the landlord or his *ijaradars*; in regard to the remaining lands of the tenures, "though the original tenants may be still in possession," they were in possession as sub-tenants of the transferees, and had paid no rent to the landlord for the last ten or eleven years; the original tenants were not made parties to the suit, and no objection was taken to the suit proceeding in their absence. The Calcutta High Court held that, in such a case,[6] the principle enunciated in *Kabil Sardar* v.

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[1] *Mathura Mondal* v. *Ganga Churn* [1906] I. L R., 33 Cal. 1219.

[2] *Kabil Sardar* v. *Chunder Nath Nag Chowdhuri* [1892], I. L. R., 20 Cal 590; *Srishteedhur Biswas* v. *Mudan Sirdar* [1883], I. L. R., 9 Cal. 648.

[3] PETHERAM, *C.J.*, in *Kabil Sardar* v. *Chunder Nath Nag Chowdhuri* [1892], I. L. R, 20 Cal. 590.

[4] *Madar Mondal* v. *Mahima Chandra Masumdar* [1906], I. L. R., 33 Cal. 531; *Dino Nath Roy* v. *Krishna Bejoy Saha* [1904], 9 C. W. N. 379 (*Sristeedhur Biswas* v. *Mudan Sirdar* [1883], I. L. R., 9 Cal. 648, followed; *Kallinath Chackravarti* v. *Upendra Chunder Chowdhury* [1896], I. L. R. 24 Cal. 212 distinguished).

[5] *Rajoni Kant* v. *Ekkowri Das* [1907], I. L. R., 34 Cal 689 (distinguishing *Madar Mandal* v. *Mohima Chandra* [1906], I. L. R., 33 Cal. 531).

[6] *Kallinath Chakravarty* v. *Upendra Chunder Chowdhry* [1896], I. L. R., 24 Cal. 212, *per* BANNERJI and RAMPINI, *JJ.*

Chunder Nath Nag Chowdhuri[1] was not applicable. From the judgment it would seem that the lands in dispute formed part of certain tenures, and not of a *raiyati jote*. However that may be, the view expressed in this case was clearly based on its own special facts.

Notice by landlord under sub-section (2).

In another case,[2] the Subordinate Judge had held that, although the *raiyat* had admittedly abandoned the land, yet, as the landlord had given no notice as required by section 87, sub-section (2), page 386, *supra*, the tenancy continued, and he could not settle it with any body else. But the learned Judges of the High Court, on this point, expressed themselves thus:—

It is not easy to understand section 87, but it cannot bear any such construction as that. It does not purport to define an abandonment, or to give an exhaustive description of the acts which constitute an abandonment, and we think it was not intended to apply to a case in which a *raiyat* transferred, and made over the possession of, his holding to some one else. That, if he had no right to make the transfer, it may or may not in law amount to an abandonment on his part, but it does not seem to be an act contemplated or provided for in the section. Certain acts are recited which may, but do not necessarily, amount to an abandonment, and it is possible to conceive a case in which a *raiyat* who had committed all those acts might still be able to persuade the Court that he had not voluntarily abandoned his holding, notwithstanding that the landlord had, after notice, duly entered under the section. When those acts are committed, the landlord is authorized to enter on the holding; but, before doing so, he is required to file in the Collector's office a notice of the abandonment and entry. The entry is, however, subject to any suit which the *raiyat* may bring to recover possession within a specified period from the date of the publication of the notice—a publication for which, we may observe, he is not in any way responsible. When such a suit is brought, the Court must determine whether there was or was not a voluntary abandonment, and that involves the determination of what a voluntary abandonment is.

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[1] I. L. R., 20 Cal. 590 [1892], *per* PETHERAM, *C. J.* *See* note (2) on previous page.

[2] *Lal Mamud Mandul* v. *Arbullah Sheikh* [1896], 1 C. W. N. 198.

The policy of sub-section (*2*) of section 87, page 386, *supra*, was discussed in another case,[1] where it was pointed out that its provisions are by no means mandatory. In a suit by a landlord to recover possession of certain lands alleged to have been abandoned by the *raiyat*, it was contended that the plaintiff, not having taken the steps required by section 87 (page 385, *supra*), was not entitled to *khas* possession of the abandoned holding; but it was held[1] that section 87 provides for certain steps to be taken by the landlord for his own protection against any subsequent action on the part of the tenant when there is no person in actual occupation of the land—in other words, when there has been a voluntary abandonment on the part of the tenant, who has left the place without making any provision for the payment of his rent or the cultivation of the land. In that event it is optional with the *zamindar* to proceed under section 87, and he would do so in order to avoid liability in an action on the part of the tenant. The old tenant having abandoned the holding, a person, who had admittedly acquired no interest under an auction-purchase, had no title to remain on the land. When a *raiyat* sold his non-transferable holding, and was no longer in possession of, and paid no rent for, the same, the lower Court was held[2] to be right in drawing the inferences of fact that the old tenant had abandoned the holding; that the new tenant was not entitled to resist the landlord's claim for *khas* possession; and that no notice under section 87 was necessary to maintain the action for ejectment brought by the landlord against both transferor and transferee.

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[1] *Bhagaban Chandra Missi* v. *Bissesswari Debya* [1898], 3 C. W. N. 46.

[2] *Samujan Roy* v. *Munshi Mahaton* [1900], 4 C. W. N. 493. *See* also *Sailabala Debi* v. *Sriram Bhattacharji* [1907], 11 C. W. N. 873, and *Rampershad* v. *Jawahir* [1908], 12 C. W. N 899, in which it was *held* that *service* of the notice under sub-s. (*2*) is not indispensable before the landlord enters on the land. In that case the mortgagee of a non-transferable occupancy-holding bought in the holding in execution of his own decree. It was *held* that the landlord could enter on the tenant's action constituted "abandonment" of the holding.

The form of notice to be given by the landlord under sub-s (*2*) is to be found as Form 8 in Schedule I. to the Rules in Appendix V. to this work, *post*. The rule framed by Government for the adoption of this form is Rule 37 in Chapter V. in the same Appendix, *post*. That rule prescribes the mode of affixing the notice. Personal service is not necessary.

This dissents from the *ratio decidendi* in another case,[1] in which it was *held* that, to entitle a landlord to re-enter, the abandonment should be complete as described in clause (*1*) of this section—

> voluntarily abandons his *residence* without notice to his landlord, *and* without arranging for payment of his rent as it falls due, *and* ceases to cultivate his holding, either by himself, *or by some other person.*

It is submitted that the essence of abandonment is, that the land be allowed to go out of cultivation, and that there is no one ready to pay the rent for it. The view taken in this case[1] after an examination of previous cases is, perhaps, the more correct interpretation.

Scope of section 87.

The provisions of section 87 (page 385, *ante*) apply only to cases in which a landlord takes possession of an abandoned holding without bringing a suit. They are not exhaustive. They do not prescribe the only modes in which a holding can be abandoned, and are not applicable to cases in which a landlord sues for possession of a holding on the ground that it has been abandoned.[2] Notice under section 87 (*2*) makes it obligatory on the tenant to have the question of abandonment speedily decided.

Limitation.

It was *held*[3] that, under sub-section (*3*), page 386, *ante*, an occupancy-*raiyat* has two years from "the date of the publication of the notice," and a non-occupancy *raiyat* has six months, within which he may institute a suit for recovery of possession of the land. But this was overruled in a later case,[4] in which it was *held* that the period of limitation, applicable to a non-occupancy *raiyat* who had been dispossessed from his holding otherwise than in execution

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[1] *Madar Mandal* v. *Mohima Chandra Mosumdar* [1906], I. L. R., 33 Cal. 531 (following *Dina Nath Roy* v. *Krishna Bijoy Saha* [1904], 9 C. W. N. 379, and *Siristidhar* v *Madan Sardar* [1883], I. L. R, 9 Cal. 648).

[2] *See Ramperskhad Koeri* v. *Jawahir Roy* [1908], 12 C. W. N. 899 in footnote 2 on p. 393, *ante*.

[3] *Bhagabati Charan Roy* v. *Luton Mondal* [1902], 7 C. W. N. 218.

[4] *Tamisuddin* v. *Ashrob Ali* [1904], 8 C. W. N. 446 S. C., I. L. R., 31 Cal. 647.

of a decree, was six years or twelve years under Article 120 or 142 of the Limitation Act (*now* IX. of 1908, first Schedule). *See* further on "Limitation" under section 89, *post*.

The bearing on this *dictum* of the late amendment to Article 3 Schedule III. of this Act has still to be considered.

Position of sub-lessee upon raiyat abandoning holding.

The provisions of sub-section (*4*), page 386, *supra*, are intended for the protection of the sub-lessee of a *raiyat* who has abandoned the holding. The landlord cannot enter upon the land before offering to the sub-lessee the remainder of the term of the sub-lease at the rent paid by the *raiyat* who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that *raiyat*. The continuance of the sub-lease, therefore, is dependent upon two conditions—(1) that the sub-lessee agrees to pay the rent which the *raiyat*, who has abandoned the holding, had to pay; and (2) that he pays up all the arrears due from that *raiyat*. If he refuses or neglects within a reasonable time to accept the offer, the landlord may enter on the holding, and let it to another tenant, or cultivate it himself, as provided in sub-sections (*1*) and (*2*). The time for the acceptance of the offer must be reasonable. The entry must be in accordance with law; for, even where the *raiyat* has abandonded the holding, the landlord has no right to enter upon the land, if in possession of a sub-lessee, without the assistance of the law.[1] If he does so dispossess the sub-lessee without the sanction of law, he commits trespass.[2] But a tenant who transferred a non-transferable right of occupancy, and took a sub-lease from the purchaser, and sought to occupy the land as the under-tenant of the purchaser, is not entitled to hold the land against the landlord,[3] to enforce the transfer of a non-transferable holding, and to compel the landlord to recognize the purchaser as his tenant.[3]

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[1] *Jumeer Ghasee* v. *Goneye Mundul* [1869], 12 W. R. 110.
[2] *Dumree Shaikh* v. *Bissessur Lall* [1870], 13 W. R. 291.
[3] *Rajani Kanto Biswas* v. *Ekkowri Das* [1907], I. L. R., 34 Cal. 689 (distinguishing *Madar Mandal* v. *Mohima Chandra Mozumdar* [1906], I. L. R., 33 Cal. 531).

Abandoned holdings do not become proprietors' private lands.

A holding abandoned within the meaning of section 87 does not become "proprietor's private land," which is described in section 120, *post*. Compare section 22 (as amended) at page 141, *supra*. Such holdings still remain part of the *raiyati* stock of the village.

Sub-division of Tenancy.

Division of tenancy not binding on landlord without his consent.— Old section 88 not affected by E. B Assam Act I. of 1908.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

(*Now applicable only in Eastern Bengal & Assam.*)

Section 88 as modified by Bengal Act I., 1907, as here printed: Division of tenancy not binding on landlord without his consent.

[88. A division of tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or with that of his agent duly authorized in that behalf:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.]

References.

Cf. the proviso to section 27 of Act X. of 1859 and the proviso to section 26 of Bengal Act VIII. of 1869.

Principle.

The landlord is entitled to see that the tenure or holding which he has let to a tenant is maintained intact; in other words, that it is not split up into parcels, or the rents payable in respect thereof distributed. It is his right; but, if he consents to the division or distribution, the law will give effect to it. This is the policy embodied in section 88.

The old law

Under the old law also, a *zamindar* was not bound to accept and register any sub-division of a tenure previously registered as undivided.[1] Nor did the existence of a custom in a particular district, by which rights of occupancy were transferable, justify a sub-division of a holding; and, where the tenant sub-divided and transferred to different persons, the landlord was entitled to re-enter.[2]

But a *zamindar*, it was said,[3] might, by accepting rent, assent to a transfer which involved a sub-division of a tenure. Where a *zamindar* himself put up a tenure for sale in separate lots, and took rent from two of the purchasers separately, it was held[4] that no written consent was necessary in order to bind him to recognize the partition. But the mere fact, that some of the joint occupiers of a joint tenure paid portions of the rent due from all, corresponding with the shares for which the joint occupiers were liable, was held[5] not to prevent the *zamindar* from suing them all, or making them all answerable for the joint debt. And, where one suit for rent was brought against persons who alleged themselves to be the holders of separate tenures, it was held[6] that the mere fact of their non-registration as such was immaterial, and the case was remanded, and the lower Court directed to inquire whether the four tenures had been indissolubly connected at the time of the former holder, and whether the *zamindar*, in receiving rents from the defendants, had only treated them as his representatives, and as payers of the component parts of the aggregate rental. "If

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[1] *Watson & Co.* v. *Ram Soonder Pandey* [1865], 3 W. R. (Act X. Rulings) 165; *Wopendro Mohun Tagore* v. *Thanda Dossia* [1869], 3 B. L. R (A. C.) 349: S. C., 12 W. R. 263.

[2] *Tirthanund Thakoor* v. *Mutty Lall Misser* [1878], I. L. R., 3 Cal. 774; *see* also *Judoonath Shahana* v. *Jadub Churn Thakoor* [1869], 11 W. R. 294, which relates to a *patni taluk*.

[3] *Bharut Roy* v. *Gunga Narain Mohapattur* [1870], 14 W. R. 211.

[4] *Nubo Kishen Mookerjee* v. *Sreeram Roy* [1871], 15 W. R. 255; *see* also *Huree Mohun Mookerjee* v. *Gora Chand Mitter* [1865], 2 W. R. (Act X. Rulings) 25.

[5] *Gour Mohun Roy* v. *Anand Mundul* [1874], 22 W. R. 295.

[6] *Ranee Lalun Monee* v. *Sona Monee Debee* [1874], 22 W. R. 334.

the *dakhilas* show," said the learned Judges, "that the payment of separate rentals had been made as for separate tenures, that would be evidence of the holdings beings separate. If the evidence shows that the amounts were paid as aliquot parts of the whole rental, that would go to show that the tenure was one."

While the law debarred tenants from splitting up their holdings without the consent of the landlord, the latter too was precluded from breaking up existing holdings, and re-distributing the lands so as to alter the nature and extent of the holdings without the consent of the *raiyats*.[1]

The present law.

The principles enunciated under the old law are applicable under the present Act. Where it is clear from the conduct of the landlord or his authorized agent that the division of the tenure or holding has been acquiesced in, or consented to, the law will not require the consent to be formulated in writing in terms. The consent is to be gathered from all the circumstances,[2] *e. g.*, where a receipt for rent is granted by the landlord or his agent, in the form prescribed by the Bengal Tenancy Act, containing a recital that a tenant's name is registered in the landlord's *serishta* as a tenant of a portion of the original holding at a rent which is a portion of the original rent, it amounts to a consent in writing by the landlord to a division of the holding, and to a distribution of the rent payable in respect thereof, within the meaning of section 88 of this Act.[2] This view pre-supposes that the receipt has been granted, if not by the landlord himself, by an agent who has been duly authorized by the landlord to grant such a receipt.

What amounts to a consent in writing by landlord.

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[1] *Ruheemuddy Akun* v. *Poorno Chunder Roy Chowdhry* [1874], 22 W. R. 336.

[2] *Pyari Mohun Mukhopadhya* v. *Gopal Paik* [1898], I. L. R., 25 Cal. 531: S. C., 2 C. W. N. 375 (distinguishing *Aubhoy Churn Maji* v. *Shosht Bhusan Bose* [1888], I. L. R., 16 Cal. 155).

The spirit of this ruling has been followed in its entirety by the framers of E. B. Assam Act I. of 1908, who left this section unchanged to encourage landlords to employ reliable agents, and to supervise personally the administration of their estates. Section 88 of the (Bengal Tenancy) Act was amended by Bengal Act I. of 1907 (as shown in page 395, *ante*), with intent to safeguard landlords from the results of unauthorized acts of their agents.

A receipt for rent granted by a landlord or his agent, containing no specification of the total *jama* of the *taluq*, no statement of the area of the *taluq*, or of the portion of the *taluq* which was separated and separately settled with the tenant, nor of the share separated, nor containing a recital that the tenant was registered in the landlord's *sherista* as a tenant of a portion of the original holding at a rent which was a portion of the original rent, does not amount to a consent in writing by the landlord to a sub-division of the holding[1] within the meaning of section 88 of the Bengal Tenancy Act (page 395, *supra*).

In the same case, it was further held[1] that an entry in a *furd* or account, which appeared on the face of it to have been written by a servant of a tenant, and exhibited payments of rent made in respect of six different *taluqs* by the tenant to the landlord, and which was signed and receipted by a *sumarnavis* of the said landlord, does not amount to a consent in writing on behalf of the landlord to a division of the tenure or distribution of the rent.

Transfer of a portion of an occupancy-holding without the landlord's consent.

Although there is no express provision prohibiting the transfer of a portion of an occupancy-holding, it is quite clear that, by section 88, such a transfer, if made without the consent of the landlord, is not binding on him. In one case[2] the Judges said: "It is contrary to the spirit, if not the letter, of section

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[1] *Jnanendra Mohan Chowdhry* v. *Gopal Dass Chowdhry* [1904], I. L. R., 31 Cal. 1026 (distinguishing *Pyari Mohan* v. *Gopal Paik* [1898], I. L. R., 25 Cal 531: S. C., 2 C. W. N 375) This case was followed in *Beni Persad Koeri* v. *Ramdhin Pandy* [1906], 10 C. W. N. 216: S. C., I. L. R., 33 Cal. 444.

[2] *Jai Narain* v. *Baran Sing* [1906], 10 C. W. N. lxxxvii.

88 of the Bengal Tenancy Act." So, too, a division by a mortgage is not binding on the landlord.[1]

And, accordingly, a suit for possession by declaration of title by the transferee of a portion of the holding against certain co-sharer landlords who had dispossessed him therefrom was held[2] not to be maintainable. The position would be different in an action, under section 9 of the Specific Relief Act (I. of 1877), to recover possession on proof of mere wrongful dispossession.

Where, however, the plaintiff did not ask that he should be declared to have purchased a fractional share of a *mukarari* holding (*i. e.*, one held at a fixed rent or rate of rent), and thereby to have become entitled to a separate holding consisting of that fractional share, and liable only for a proportionate share of the entire rent, but asked for a declaration that he was entitled to be regarded as one of the persons who owned and possessed the holding in question, the liability for the rent of the entire holding still continuing joint, and for a declaration of his right to that share, and for joint possession of the same after setting aside a sale held in execution of a decree for rent to which he was not a party, it was *held*[3] that the suit was maintainable, and that the plaintiff was entitled to joint possession of such share in the entire holding. It was noted that Chapter III., section 11, and Chapter IV., section 18 (pages 97 and 113, *ante*, respectively), of this Act recognize the transferability of permanent tenures as defined in section 3 (*8*) at page 51, *supra*, and of holdings at fixed rates of rent.

When landlord not entitled to enter upon land.

A landlord is not entitled to enter upon the land merely because the tenant has transferred a portion of it, though still

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[1] *Jai Narain* v. *Baran Sing* [1906], 10 C. W. N. lxxxvii.

[2] *Kuldip Singh* v. *Gillanders, Arbuthnot. & Co.* [1899], I. L. R., 26 Cal. 615: S. C., 4 C. W. N. 738. *See* also *Sheik Gosaffur* v. *E. Dalgleish* [1896], 1 C. W. N. 162.

[3] *Mohesh Chunder Ghose* v. *Saroda Prasad Singh* [1893], I. L. R., 21 Cal. 433.

in possession of another portion; but he is entitled to a declaration that the transfer which had been made without his written consent is not binding upon him.[1]

Tenures.

This section control sections 12 to 16 and section 18. *See* section 17, page 109, *ante*. The indivisibility of a tenure without the landlord's consent stands upon the same footing as that of a holding. Where, therefore, a part of a tenure is transferred, the transferee is jointly liable with his co-sharers for the whole rent.[2]

The transferor of a share, held separately for a long time past, is not liable for the entire rent.[3]

Consent of whole body of landlords required.

The consent referred to in this section must be the consent of the whole body of landlords, either actually or constructively. The consent of some of the landlords only, cannot validly effectuate the division of a tenure or holding, or a distribution of the rent payable thereon.[4]

Liability of transferor for rent.

Where a *dur-patnidar*, to the knowledge of his landlord, transferred a portion of the *dur-patni* to one person on one date, and the remainder to another person on a subsequent date, it was *held*[5] that, after the second transfer, the liability of the *dur-patnidar* for rent ceased, and the two transferees became jointly and severally liable to the landlord for the same. The act of the *dur-patnidar* in transferring the tenure piece-meal had the effect of dividing the tenure contrary to the provision of section 88, Bengal Tenancy Act.

When *raiyats*, having a permanent interest in a holding, sold a portion of it, and the transferees again sold a portion to one *R*,

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[1] *Sheik Gosaffur Hussein* v. *E. Dalgleish* [1896], 1 C. W. N. 162 (following *Kabil Sardar* v. *Chunder Nath Nag Chowdhry* [1892], I. L. R., 24 Cal. 590).

[2] *Sreemutty Jogemaya Dassi* v. *Girindra Nath Mukherji* [1900], 4 C. W. N. 590; *see* also *Sourendro Mohan Tagore* v. *Surnomoyi* [1898], I. L. R., 26 Cal. 103: S. C., 3 C. W. N. 38.

[3] *Kali Sundari* v. *Dharani Kundu* [1905], I. L. R, 33 Cal 279.

[4] Special Appeal No. 28 of 1897 heard on 22nd and 27th June 1898, decided 7th July 1898.

[5] *Kishori Raman Kapuria* v. *Ananta Ram Laha* [1906], 10 C. W. N. 270 (*Kristo Bulluv Ghose* v. *Kristo Lal Singh* [1889], I. L. R., 16 Cal. 642; *Chintamoni Dutt* v. *Rash Mondal* [1891], I. L. R., 19 Cal. 17; and *Sreemutty Jogemaya Dassi* v. *Girindra Nath Mukherji* [1900], 4 C. W. N. 590, referred to).

and *R* obtained settlement from the landlord, it was *held* that although the transferees took no steps to get their names registered in the landlord's *sherista* and had paid no rent since their purchase, still the landlord was bound to sue the transferors and the transferees jointly, as he had had notice of the transfer under Chapter III., section 17 of this Act (page 109, *ante*). A sale of the holding in execution of a decree for rent obtained against the transferors only did not therefore affect the transferees' interest in the holding. The landlord was bound to recognize the transfer, but *not* the sub-division effected by the transfer in the absence of his written consent as required by this section (88), and the interest of the transferees was not an incumbrance that could be avoided by a purchaser at a rent-sale[1] (*vide* sections 159, 160, 161, 167, *post*).

It will be noted that section 17 (page 109, *ante*) has no application to *raiyati* holdings except those held at a fixed rent or rate of rent. *See* section 18 (page 113, *ante*), which extends the provisions of Chapter III. to certain *raiyati* holdings.

When lands, but not the '*holding*,' have been divided between co-sharers, the landlord can still sue all the co-sharers jointly.[2]

Whether the division of a tenancy creates or does not create a new tenancy depends on the intention of the parties, and is to be decided on the evidence.[3]

Ejectment.

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

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[1] *Baistab Charan Chowdhry* v. *Akhil Chandra Chowdhry* [1906], 11 C. W. N. 217.

[2] *Dukharan Sing* v. *Bibi Sogra* [1908], 12 C. W. N. 568.

[3] *Mulluk Chand Dass* v. *Satish Chandra Dass* [1909], 14 C. W. N. 335.

Cf. section 21 of Act X. of 1859 and section 22 of Bengal Act VIII. of 1869; also sections 10 (p. 95), 18 (p. 113), 25 (p. 160), 44 (p. 226), 49 (p. 242), and 66 (p. 319), *ante*, and section 178, sub-section (*1*), clause (*c*), and section 181, *post*. References.

So far as the language of this section goes, it is unrestricted; it declares that no tenant shall be ejected except in execution of a decree, *i.e.*, in accordance with law; otherwise forcible eviction leading to disturbances of the public peace might be the result. *See* notes on section 25, *supra*, page 160, and on section 65, page 305, *supra*, on the question of liability to ejectment. *See* also new section 186A, *infra*, which provides a penalty for a denial of the landlord's title, without reasonable and probable cause. Denial of the landlord's title is not a ground for ejectment. But the Calcutta High Court has excluded[1] one class of tenures or holdings from the operation of the section. It has held that, inasmuch as section 181, *post*, declares that "nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed," section 89 does not apply to service-tenures. It would seem to follow from this ruling that the holder of a service-tenure may be ejected by the landlord without recourse to law. Such a result could hardly have been within the contemplation of the Legislature. Besides, it is submitted, the words of section 181 (*post*) do not quite warrant the construction put upon that section; it only declares that the provisions of the Act shall not affect any "incident" of a *ghatwali* or other service-tenure. The meaning attached to the word "incident" is clear from the latter part of the section. The right of the landlord to eject a tenant by force can hardly be called "an incident of a tenure." The ruling, it is submitted, must be taken as applicable only to the facts of the particular case. Principle. Exclusion of service-tenures from section 89.

[1] *Mokbul Hossain* v. *Ameer Sheikh* [1897], I. L. R., 25 Cal. 131.

A subsequent ruling[1] decided that, where tenants were originally let into possession of land by all the co-sharers of a zamindari, one co-sharer cannot sue for partial ejectment to the extent of his share unless the tenancy has been determined by all the co-sharers.

A service-tenure was the subject-matter of that case, but the principle laid down would seem to be of general application.

Application of Specific Relief Act (I. of 1877).

Whether a service-tenure does or does not fall within the purview of section 89, it is quite clear that any tenant ousted from his tenure or holding otherwise than in due course of law may bring an action under section 9 of the Specific Relief Act (I. of 1877), which depends merely upon proof of previous possession and illegal ouster, and has no relation to title.[2]

Bar of contracts.

Section 89 is applicable even where the tenant has contracted with the landlord making himself liable to ejectment otherwise than in accordance with the provisions of this Act [*see* clause (*c*), sub-section (*1*), section 178, *post*].

A benamidar cannot bring a suit for ejectment.

A suit for ejectment cannot be brought by a mere *benamidar*, he having neither title to, nor possession of, the property.[3]

No ejectment from part of tenancy.

A landlord cannot eject a tenant from part of the subject of his tenancy, and claim rent for the part remaining in his occupation.[4]

No conversion of ejectment-suit into rent-suit.

Nor can a suit brought against tenants as trespassers be converted at the appellate stage into a suit for rent; it should be dismissed on failure of the plaintiff to prove his specific allegation.[5]

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[1] *Ghulam Mohiudin Husain* v. *Khairan* [1904], 8 C. W. N. 325: S. C., I. L. R., 31 Cal. 786. *See* the same case in the notes to ss. 181, 188, *post*.

[2] Under the former procedure, possessory actions could be brought under s. 15, Act XIV. of 1859; *Jonardun Acharjee* v. *Haradhun Acharjee* [1868], 9 W. R. 513; *Nund Kishore Lall* v. *Sheo Dyal Oopadhya* [1869], 11 W. R. 168; *Urjoon Dutt Bonick* v. *Ram Nath Kurmokar* [1873], 21 W. R. 123.

[3] *Issur Chandra Dutt* v. *Gopal Chandra Das* [1897], I. L. R., 25 Cal. 98: S. C., 3 C. W. N. 20.

[4] *Lalita Sundari Dassee* v. *Rani Surnomoyee* [1900], 5 C. W. N. 353; *Harro Kumari Chowdhrany* v. *Purna Chandra Sarbogya* [1900], I. L. R., 28 Cal. 188.

[5] *Kali Kisore Chowdhury* v. *Gopi Mohun Roy Chowdhury* [1897], 2 C. W. N. 166.

Limitation.

The words "instituted within six months from the date of the dispossession," in section 9 of the Specific Relief Act, I. of 1877, were repealed by the Repealing Act, 1891 (XII. of 1891); but the same period of limitation for suits under that section is provided in Article 3 of the First Schedule to the Indian Limitation Act, IX. of 1908. It has been held[1] by a Full Bench of the High Court that the remedy indicated in section 9 of the Specific Relief Act (I. of 1877) is not the only remedy which the Legislature has provided for a non-occupancy *raiyat* who has been dispossessed otherwise than in due course of law, and that the period of limitation applicable to the case of a non-occupancy *raiyat* who has been dispossessed from his holding otherwise than in execution of a decree is either six years, under Article 120, or twelve years under Article 142, of the First Schedule to the Indian Limitation Act (IX. of 1908).

Ben. Act I., 1907, and E. B. Assam Act I., 1908.

But the alteration of Article 3 of Schedule III., *post*, by the recent Amending Acts has apparently altered the law on this point.

Computation of court-fee.

Under clause xi. of section 7 of Act VII. of 1870 (the Court Fees Act), in a suit to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, the amount of court-fee payable is to be computed according to the amount of rent of the land to which the suit refers payable for the year next before the date of presenting the plaint.

As to liability to ejectment, a recent Privy Council case[2] has laid down the principles to be followed in deciding what the intentions of the parties were, and whether a tenant is a mere ten-

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[1] *Tomisuddin* v. *Ashrub Ali* [1904], 8 C. W. N. 446 (overruling *Bhagabati Charan Roy* v. *Luton Mondal* [1902], 7 C. W. N. 218). *See* also s 87 (3), *supra* (p. 387) and Sch. III. (3) to this Act, *infra*

[2] *Naba Kumari Debi* v. *Behari Lal Sen* [1907], I. L. R., 34 Cal 902 (following *Upendra Krishna Mandal* v. *Ismail Khan Mahomed* [1904], I. L R., 32 Cal. 41; *Nilratan Mandal* v *Ismail Khan Mahomed* [1904], I. L. R., 32 Cal. 51; and *Ram Chunder Dutt* v. *Jughes Chunder Dutt* [1873], 12 B L R. 229, 235).
See also *Promoda Nath Roy* v. *Sri Gobind Chowdhry* [1905], I. L. R. 32 Cal. 648.

ant-at-will or not. In it it appeared that the tenure had been in existence for about 80 years; that the rent had never been enhanced though the value of the holding, as measured by its sale-price, had greatly increased; that it had again and again been sold by *kobalas* purporting to convey an absolute interest; that it had passed by will, and that the new tenants had been recognized by the landlords after such devolutions: and it was *held* that the inference was, that it was a permanent tenure. On the construction of the *kobalas*, *held* that the insertion therein of a stipulation that the transferee should take a new *pattah* in his own name did not create a new tenure.

Measurements.

Landlord's right to measure land.

90. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years except in the following cases (namely):—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer, and not more

than two years nave elapsed since the date of his entry under the purchase.

(*3*) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Principle.

Under this section a landlord can measure all lands comprised in his estate or tenure other than land exempt from payment of revenue.

Lease to third party no bar to measurement.

A proprietor of an estate is not barred from measuring land comprised in his estate merely by the fact that it is leased to a third party, nor is he bound to show that he is in actual receipt of the rents when he applies to measure the land.[1]

Lands exempt from revenue.

Land exempt from the payment of revenue, but situated within the periphery of a revenue-paying estate, cannot be measured by the proprietor of the revenue-paying estate within which it is situated, since the revenue-free land itself forms a separate estate [*see* definition of "estate" in section 3 (*1*), *ante*, p. 50], the owner of which can, as a matter of course, measure his own revenue-free land.

Whether co-sharer can measure.

Under the former law, it was held[2] that a fractional co-sharer landlord could measure provided he made all the other co-sharers parties to the proceedings, because, it was said, if the co-sharers are made parties to the suit, the tenants can have no reason to complain. It is doubtful whether, looking to section 188, *post*, a co-sharer landlord can now measure. The addition of the other co-sharers in the proceedings is essential to prevent the *raiyats* from being harassed by successive attempts on their part to measure the land. It was said in one case that a joint *owner* can apply under this section, but a joint landlord cannot apply for a measurement. It

Joint owners not necessarily joint landlords. —See section 188, *post*.

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[1] *Ranee Krishto Motee Debia* v. *Ram Nidhee Sircar* [1868], 9 W. R., p. 331.
[2] *Abdool Hossein* v. *Lall Chand Mohtan* [1883], I. L. R., 10 Cal. 36.

was also held[1] that, if one set of landlords obtains separate *kabuliyats* entering into separate contracts for rent with the tenants, such landlords cease to be joint landlords with the other co-proprietors of the land. They become joint owners, and not joint landlords.

Measurement by both immediate landlord and superior landlord.

In another case[2] the Calcutta High Court has held that, where, by his contract, a tenant had attorned, not only to his immediate landlord, but also to the superior landlord, and had bound himself to pay additional rent for any area found to be in excess of the area of the tenure, both landlords were entitled to measure the land. The facts of the case were as follow: A *kabuliyat* was executed, before the passing of the Bengal Tenancy Act, by defendant No. 1, the holder of a *dar-maurasi patta*, in favour of his immediate landlord, a *mukurraridar* providing that the former should have his name entered in the *zamindar's serishta* in place of the *mukurraridar*, and should pay rent direct to the *zamindar;* and also that, in case the area of the tenure should exceed a certain number of *bighas*, he should pay rent on each excess *bigha*, at the rates of 12 annas and 2 annas, to the *zamindar* and the *mukurraridar*, respectively. The agreement was ratified by the *zamindar*. On the *zamindar* suing defendant No. 1 for measurement of the tenure, and for increased rent, it was objected that, under the *kabuliyat*, only the *mukurraridar* was entitled to sue for such measurement. The High Court held that, under section 90 of the Bengal Tenancy Act, every landlord had a right to sue for measurement; and that, as defendant No. 2 had accepted the *zamindar* as his landlord, he had made himself liable to be sued by him. It was also

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[1] *Jognesh Prokash Ganguli* v. *Maniradi* [1908], I. L. R., 35 Cal. 417. *Matungini Dassi* v. *Ramdas Mullick* [1902], 7 C. W. N. 93, and *Gobind Chandra Pal* v. *Hamidulla Bhuian* [1903], 7 C. W. N. 670, referred to. This settles a question left doubtful in *Moheebali* v. *Ameer Rai* [1890], I. L. R., 17 Cal. 538.

[2] *Matungini Dassi* v. *Ramdas Mullick* [1902], 7 C. W. N. 93.

held[1] that, although the *mukurraridar* and the *zamindar* were both landlords of defendant No. 1, they were not joint landlords within the meaning of section 188, *post*.

A common manager appointed under section 95, *post*, can, as a matter of course, measure, since he acts on behalf of all the proprietors.

Measurement by common manager.

Char, dearah, bhaoli, and *utbandi* lands (*see* section 180, *post*) can, under clause (*b*), sub-section (*2*), of the present section, be measured as often as the landlord wishes. In some districts[2] a tenancy is found in which rent is charged for each crop raised. It would seem that a landlord is entitled to measure the crop every harvest in such cases.

Measurement of *char* lands, etc.

91. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last-foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

(*2*) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Where a *bonâ-fide* measurement was made by a superior owner after notice to the tenants, but was incorrectly made, the tenants raising no objection at the time, it was held[3] under the old law that they afterwards could not defeat a suit by the owner for possession of accreted land on the ground of the incorrectness of the measurement made in their absence, there

Change in the law.

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[1] *Matungini Dassi* v. *Ramdas Mullick* [1902], 7 C. W. N. 93.
[2] *See* Purnea Final Report, 1908, pp. 63, 64.
[3] *Alimuddi* v. *Kali Krishna Tagore* [1884], I. L. R., 10 Cal., p. 895.

being no fraud; but, under the present law, the map or record prepared in a tenant's absence is only presumed to be correct, and it is open to the tenant to rebut the presumption.[1]

Procedure.

Proceedings under this section do not constitute a suit. An order for measurement passed by a Civil Court is not a decree, and no appeal lies from it.[2] And the order should be limited to one directing, in the words of the section, that the tenants do attend and point out the land; and a declaration made in such an order, that the petitioner is entitled to make the measurement with a pole of a certain measure, is bad in law, and without jurisdiction.[1]

Applications to what Court to be made.

Applications under this section must be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the tenure or holding which it is proposed to measure [*see* section 144 (*2*), *post*]. *Compare* section 158, *post*. A separate application in respect of each tenant is not necessary.[2]

Standard of measurement.

92. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre unless the Court or Revenue-officer directs that it be made by any other specified standard.

(*2*) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(*3*) The Local Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area;

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[1] *Dya Gasi* v. *Ram Lal Sukul* [1897], 2 C. W. N. 551.
[2] *Haji Shah Momtaz Husain* v. *Raghunandan Sahu* [1910], 14 C. W. N. 231.

and every declaration so made shall be presumed to be correct until the contrary is shown.

The old law.

Measurements under Bengal Act VIII. of 1869 had to be made (section 41) according to the "standard pole of measurement of the *pargana*" in which the land was situated. Where there was a dispute as to the length of the standard pole, it was held[1] at first that the Collector had jurisdiction to inquire into and decide the true length of it, and afterwards that the Civil Courts should decide what was the standard pole in each case; that great weight should be attached to *kanungos'* papers; that the local *hâth* (cubit) need not necessarily correspond with the English cubit of 18 inches,[2] and that there might be two standards of measurement in the same *pargana*.[3]

The old "standard pole of the *pargana*."

The "standard pole of the *pargana*," like the "*pargana* rate" (*see* notes to section 31, *ante*, page 193), is a survival from the old customs of the country, according to which measurements were made by throwing a bamboo pole. In practice, the standard pole of the *pargana* has generally ceased to exist. No such thing as a standard pole is kept in Collectorates at the present time; and such records as there may be, of what may have been the length of standard pole of each *pargana* in former times, are misleading, and do not agree with the standards now actually in use.

Varieties of standards of measurement.

There are in fact great varieties of local standards of measurement. The standard *bigha* in Lower Bengal generally is one of 14,400 square feet (1,600 square yards)[4] or 20 poles (*laggis*) in length by 20 poles in breadth, the pole being 6 feet in length. In some parts of Bihar, where rent is paid at a certain rate per *bigha*, the *bigha* also consists of 400 square

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[1] *Srimati Monmohini Chowdrani* v. *Prem Chand Roy* [1870], 6 B. L. R. 1.

[2] *Nund Duntput Pritheebaree* v. *Tara Chand Pritheebaree* [1865], 2 W. R. (Act X.) 13.

[3] *Bhaggobutty Churn Mookerjee* v. *Panaoollah Moonshee* [1864], 1 W. R. 225; *Sarbanund Pandey* v. *Ruchia Pandey* [1865], 4 W. R. (Act X.) 32.

[4] Board's Rules, Vol. I., p. 272.

Varieties, etc. —*contd.*

poles (*laggis*), but the pole (*laggi*) may be of any length from 4 *hâths* (cubits) up to 9 or more; and the length of the *hâth* itself, or nominal cubit of 18 inches, is often determined in practice by the length of the forearm of a particular individual in the village.

The size of the *bigha* varies, not only from *pargana* to *pargana*, but from village to village. There may even be different standards in different estates in the same village, and in different parts of the same estate, and a "*bigha*" may contain any area from a third of an acre to an acre-and-a-half or more.

The length of the standard pole, as recorded in the Collector's office (where there is any such record), is not conclusive proof of the length of standard by which rents are actually regulated, nor is the length of the pole according to which the *thakbust* survey was made such proof, though it may be some evidence of the length of the pole (*laggi*) now current. The *thakbust* survey records of Bihar generally show the standard pole as one of 6½ cubits, even where the pole by which the *bigha* is determined for payment of rents is admitted by the landlords and tenants concerned to be 7½ cubits, as in parts of Darbhunga, or 9 cubits, as in parts of Champaran.

No rules made under sub-section (3).

The Local Government has not made any rules under sub-section (*3*) for declaring for any local area the standard or standards of measurement locally in use. The standards in use have therefore, when disputed in any suit or proceeding, to be proved by evidence in each case.

Standard of measurement in surveys under Chapter X.

For the purposes of surveys under Chapter X. of the present Act (*post*), the Board of Revenue have instructed Revenue-officers to extract the areas in acres, and show them in the records.[1] Without the special orders of the Board, no areas other than in acres can be shown in such records.

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[1] Settlement Manual, 1909, p. 124, rule 459.

To teach both landlords and tenants what an acre is, *laggis* of 10 feet 5·2 inches in length have been distributed for some years past[1] in Chapter X. proceedings. A square of which the side is 20 of these '*laggis*' is exactly an acre.

In some parts of Bengal (*e. g.*, in parts of Midnapur district), the '*bigha*' is not 20 by 20 *laggis*, but only 20 by 18 or 20 by 16, or even less. This is probably the result of successful attempts to enhance rents by diminishing the area of the *bigha*, while keeping the length of the *laggi* and the rate per *bigha* unchanged.

The question as to what *laggi* is in use in aparticular estate or part of an estate may be decided as a dispute under section 106 (*post*). This question is of the utmost importance in dealing with applications under section 105, *post*, for an increase of rent under section 52 (page 265, *supra*).[2]

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue—

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application, in case (*a*), of the Collector, and, in case (*b*), of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless

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[1] Settlement Manual, 1909, p. 107, rule 385.
[2] *Ibid*, p. 114, rule 420, *et seq.*

he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Ben. Act VII. of 1876.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

References.

Cf. Regulation V. of 1812, sections 26 and 27.[1]

Principle.

The policy of the present section is evidenced by the two conditions, under either of which the District Judge is empowered to call upon the parties to appoint a common manager—*first*, inconvenience to the public; and, *secondly*, injury to private rights. In the first case, the Collector of the District, as the curator of the public interests, is entitled to apply; in the second

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[1] Repealed by the present Act. S 26 of that Regulation ran as follows: "Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted that, whenever sufficient cause shall be shown by the Revenue-authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the *Zila* and City Judges to appoint a person, duly qualified and under proper security, to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate."

And s 27 laid down: "In like manner, should the authorities aforesaid, or any individual holding an interest in the estate, be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the *Zila* or City Judge, and to move the Court for the removal of the said manager."

Following the practice in vogue under the Mogul Government, provision was made so early as the Decennial Settlement for the appointment of managers in joint estates. That provision was re-enacted in ss. 26 and 27, Reg. V. of 1812, above set out, and was supplemented by Reg. V. of 1827, which enacted that, when the *Zila* Court thought it just and proper under the provision of Reg. V. of 1812 to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment, and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof. The reference in Reg. V. of 1872 to Reg. V. of 1812 was repealed by Act XVI. of 1874, so that it is not now competent to a District Judge to send a precept to the Collector, directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Reg. V. of 1812, which is still in force, is incomplete, and, in consequence, almost inoperative (*see* Rent Commissioner's Report, p. 74, p. 135).

The present Act repeals the sections of Reg. V. of 1812 remaining in force, and, in ss 93 to 100, re-enacts them, and provides a procedure for giving effect to them. The extension of these provisions to tenures is, however, a modification of the law. The proviso to s. 93 of the present Act is, of course, new.

case, any one having possession of any share of the property may make an application. But, in the latter case, the interest must be of an actual and tangible character; the person applying must be actually in possession of the interest he claims; and, if he is a co-owner of an estate, his name and the extent of his interest must be registered under the Land Registration Act, 1876, otherwise the application will not be entertained.

Bengal Act VII, 1876.

The power vested in the District Judge by section 93 and the following sections is of a quasi-judicial character. And "an application" under section 93 is not "a suit" within the meaning of section 143 (*post*), as the operation of that section is confined to suits between landlord and tenant. Accordingly, an order rejecting or granting an application for the appointment of a common manager is not appealable.[1] But, if an order is made in contravention of the law, and is consequently *ultra vires*, the High Court can interfere under section 622 (now section 115, Act V., 1908) of the Code of Civil Procedure.[2]

The powers of the District Judge.

Where one application was made jointly by a number of co-sharers of a certain property, calling upon the remaining sharers to show cause why a common manager should not be appointed, and it appeared that the property consisted of 243 estates or *taluks*, of which about 60 bore separate numbers on the Collector's Land Register, while other portions of the property were *taluks* and dependent tenures, *howalahs*, and *raiyati* holdings, which did not appear on the Collector's Register the High Court pointed out that there need not be as many applications as there were estates or tenures mentioned in the application; but that, having regard to the circumstances, it would be necessary for the District Judge to call upon the applicants to state whether all of them were entitled in common to the various estates and tenures mentioned therein; and, if not, to divide themselves into as many groups as there might be

Application by a number of co-sharers.

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[1] *Hossain Bux* v. *Mutook Dharee Lall* [1887], I. L. R., 14 Cal. 312.
[2] *Ganpda Kanta Roy* v. *Probhabati Dasi* [1893], I. L. R., 20 Cal. 881.

properties held by them in common. In the latter case, it would be necessary that each group of shareholders should put in separate applications: if such separate applications would have to be put in, and not otherwise, separate court-fees should be levied upon each application, and the notice, in the case of tenures, would be as provided by section 93, and would be of the same character, and to the same effect, as in the case of estates.[1]

Where a District Judge made an order for the appointment of a common manager in respect of several revenue-paying and revenue-free estates of which the co-owners were not the same, it was *held*,[2] following a previous ruling,[1] that the District Judge should have separately considered each property or groups of properties, and made separate appointments in regard to each property or groups, though the same common manager might be appointed in all the cases.

Weere, on being directed to deal with the case in that manner, the District Judge, instead of beginning *de novo* under section 93, issued notices under section 94, asking the co-owners to appoint a common manager, it was held[2] that *de-novo* proceedings should have been taken, and the co-owners should have been given an opportunity of showing that, owing to the altered state of things, there was no longer any necessity for appointing a common manager.

A District Judge can, in the exercise of his discretion, consider the propriety of the appointment of a common manager, whatever be the stage at which the proceedings may have arrived. This discretion is to be exercised, not arbitrarily, but according to well-established rules. A co-owner, who has opened a separate account in the Collector's registers, or makes separate collections for his share, is nevertheless liable to have his share taken over by a common manager, although the dispute may not

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[1] *Fazal Ali Chowdhry* v. *Abdul Mojid Chowdhry* [1887], I. L. R., 14 Cal. 659.
[2] *Saradindu Roy* v. *Collector of Rangpur* [1907], 11 C. W. N. 1143.

have extended to his share. His remedy, if any, is to have his share demarcated by metes and bounds.[1]

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last-foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

Principle.

This section empowers the District Judge, upon the failure of the co-owners to show cause, to order them to appoint a common manager. A copy of the order must be served on any co-owner who did not appear before it was made.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last-foregoing section, as the District Judge may fix in this behalf, or, where the order has been served, as directed by that section, within a like period after such service, appoint a common manager, and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof, or,

(*b*) in any case, appoint a manager.

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[1] *Saradindu Roy* v. *Collector of Rangpur* [1907], 11 C. W. N. 1143.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

Principle.

If the order under the previous section is not obeyed, the District Judge has power, under section 95, to take certain steps with the object set forth in section 93. He can either direct that the estate or tenure be managed by the Court of Wards should the Court of Wards consent to undertake the management, or himself appoint a manager.

Examination of cases.

Where a proper application is made to the District Judge under section 93, by some of the co-owners, for the appointment of a common manager, and notice is served on all the co-owners to show cause why the application should not be acceded to, and no cause is shown; but ultimately, after giving the parties time to come to an arrangement, the District Judge, by consent more or less express, appoints a common manager, it has been held[1] that the appointment is valid. In the case referred to, the learned Judges observed as follows:—

It would, no doubt, have been better if the Judge had, under section 94, made an order directing the parties to appoint a common manager; but his omission to do that does not, we think, in any way invalidate the order, or diminish the scope of it. The manager was not a manager appointed by the parties, but by the District Judge, although, no doubt, the parties agreed to the appointment of the particular person selected; and, in pursuance of that order, the manager assumed and has retained up to the present time the management of the properties. It could not, we think, be contended with any success that Bhabani Nath Rai could, so long as that order was in force, himself collect the rent payable on account of this three-anna share; and, if he could not do that, the person who has derived title from him as *patnidar* is not in any better position. He took *patni*, as the Judge remarks, knowing that the property was under the charge of a common manager appointed by an order of the Court—an order which, under clause (*3*) of section 93, would have the effect of preventing any of the co-owners from themselves realizing the rents due to their respective shares. If we were to hold that a person taking a lease of the shares of one of the co-owners after the appoint-

[1] *Juggut Chunder Chowdhry* v. *Golach Chunder Ghose* [1896], I. L. R., 23 Cal. 522.

ment of a common manager could realize his own share of the rent, we should hold in effect that it would be open to any co-owner to defeat at his pleasure the sole object for which a manager is appointed.

The case is different where the parties, while objecting to the appointment of a common manager, agree that the property should be made over to the Court of Wards, and, under an order of the Judge, it is made over to the Court of Wards, who assume the management, and continue it for some time, but afterwards give it up, and the Judge thereupon, without taking any further proceedings under section 93, proceeds to appoint a common manager. In such a case, the High Court has held[1] that the District Judge had no authority to do that, as the consent under which the Court of Wards took charge was limited to the Court of Wards, and did not give the Judge power to appoint any other manager. But, if the manager resigns, the District Judge can at once appoint a new manager.[2]

S. 78 of Bengal Act VII. of 1876.

The provisions of section 78 of the Land Registration Act (Bengal Act VII. of 1876) apply to a manager appointed under the present section; he must therefore have his name registered in accordance with that Act before he can recover rent from the tenants of the estate of which he has been appointed a manager; and, if his name is not registered, his suit is to be dismissed.[3] It is sufficient if he get his name registered after the institution of the suit for rent.[4] *See* also notes to section 60 (page 297, *ante*).

Powers of a common manager.

A common manager appointed under this section has power to mortgage property with the permission of the District Judge. While the common management exists, the powers of the co-

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[1] *Ganoda Kanta Roy* v. *Probhabati Dasi* [1893], I. L. R., 20 Cal. 881.

[2] *Dwarka Nath* v. *Bankutesh* [1907], 7 C. L. J. 109, dissenting from an earlier case *inter partes* [1905], 10 C. W. N. 437.

[3] *Maqbul Ahmed Chowdhry* v. *Girish Chunder Kundu* [1892], I. L. R., 22 Cal. 634.

[4] *Alimuddin Khan* v. *Hira Lall Sen* [1895], I. L. R., 23 Cal. 87, referred to in *Kalihur Ghose* v. *Umae Patwari* [1896], I. L. R., 24 Cal. 241, where the distinction between incompetency to maintain a suit until certain conditions are fulfilled and incompetency to recover by a suit is pointed out. *See* also *Hassall* v. *Wright* [1870], L. R., 10 Eq. 509.

owners must be regarded as in abeyance, and therefore a mortgage created by a co-owner during the existence of the common management cannot in any way interfere with, or derogate from, the rights created under any transaction made by the common manager with respect to the joint properties.[1]

The appointment of a manager does not, however, take away from a co-owner his power of dealing separately with his own share; but any interest acquired by a mortgagee or purchaser from a co-owner during the period of management would be subject to any charge on the estate that might be properly incurred by the manager during that period.[2]

A common manager appointed under this section can sue, on behalf of the co-owners, for recovery of possession of land.[3]

False evidence.

There is no provision in the Bengal Tenancy Act authorizing a District Judge, upon the application of a common manager appointed under section 95 to institute an inquiry as to the existence of certain accounts and papers, or to direct another person to deliver up such papers, or to examine such person on oath in such a proceeding: consequently, a person giving alse evidence in such a proceeding does not commit an offence funder section 193 or section 199 of the Indian Penal Code.[4]

Power to nominate person to act in all cases under cl. (b) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last-foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless, in the case of any

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[1] *Amar Chand Kundu* v. *Roy Goloke Chundra Chowdhry* [1900], 4 C. W. N. 769.

[2] *Amar Chunder Kundu* v. *Shoshi Bhusan Roy* [1904], 8 C. W. N. 225.

[3] *Sibo Sundari Ghose* v. *Raj Mohan Guho* [1904], 8 C. W. N. 214.

[4] *Abdul Majid* v. *Krishna Lal Nag* [1893], I. L. R., 20 Cal. 724.

estate, the Judge thinks fit to appoint one of the co-owners themselves as manager.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

The Court of Wards Act, 1879, applicable to management by Court of Wards.

Ben Act IX. of 1879.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property, shall apply to the management.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

Provisions applicable to manager.

98. (*1*) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way, and partly in the other, as the District Judge from time to time directs.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised; and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period, and in such form, as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

The powers given by section 98 of the Bengal Tenancy Act to a manager of joint property appointed under section 93 "for the purposes of management" include the power to mortgage or to sell the property.

The restraint put upon the co-owners by section 98, sub-section (3), of the Act, whilst the estate is under management, is co-extensive with the power conferred on the manager: it does not extend to the exercise of individual rights.

Where one of the co-owners of an estate under management mortgaged his share which, in execution of a decree on the mortgage, was purchased by the mortgagee, it was *held*[1] that the mortgagee thereby became a co-owner under the manager, and, as such, was entitled to the benefit of a decree for redemption in a suit on a mortgage of the estate by the manager.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

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[1] *Amar Chandra Kundu* v. *Shoshi Bhusan Roy* [1904], I. L. R., 31 Cal. 305 (P. C.).

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections. **Power to make rules.**

Extended to Cuttack, Puri, and Balasore Districts (January, 1906).

For rules made by the High Court under this section, *see* Appendix VII. to this work, *infra*. **Reference.**

Certain words were lately inserted in section 101 (*2*) (*c*), *post*, empowering the Local Government to order the preparation of a record-of-rights under Chapter X., without reference to the Governor-General in Council, and without his previous sanction, when a manager has been appointed under section 95 of this Act. **Ben. Act I., 1907; E. B. Assam Act I., 1908.**

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

References.

THIS Chapter was substituted for the original Chapter X. by Bengal Act III. of 1898, section 7. As regards proceedings under sections 104, 105, and 106 of Act VIII. of 1885 as originally passed, *see* Bengal Act III. of 1898, sections 8 and 9.

Numerous alterations and additions have been embodied in this Chapter by Bengal Act I. of 1907 and E. B. Assam Act I. of 1908. These are referred to where they are inserted in the text below.

The whole of this Chapter extends to Orissa.

It falls into four parts as follows:—

Part I.—Record-of-rights (sections 101 to 103B, inclusive):

Part II.—Settlement of Rents, Preparation of Settlement Rent Roll, and Disposal of Objections in cases where a Settlement of Land-revenue is being, or is about to be, made (sections 104 to 104J, inclusive):

Part III.—Settlement of Rents and Decisions of Disputes in cases where a Settlement of Land-revenue is not being, or is not about to be, made (sections 105 to 109A, inclusive):

Part IV.—Supplemental Provisions (sections 109B to 115A, inclusive).

The procedure under Parts II. and III. differs considerably. The differences are noted in detail below as they occur in the text, and on page 428, *infra*.

Objects of a survey and record-of-rights.

The Government of India, in their despatch to the Secretary of State for India, No 6, dated 21st March 1882,[1] described the aims and objects of a survey and record-of-rights to be the putting an end to the uncertainty that promotes rent-disputes, the efficient protection of the *raiyats*, and the improvement of local knowledge, which would enable Revenue-officers and Civil Courts more effectively to examine and deal with the various interests and difficulties arising out of the relations of landlord and tenant. One of the objects of surveys and records-of-rights also was to secure that officers of Government should "understand the rural economy of their districts in order that they may be properly equipped for their frequent contests with calamity or wrong."[2]

When a survey and record-of-rights may be ordered.

Under section 101, *infra*, the Local Government may, with the previous sanction of the Governor-General in Council, order a survey to be made, and a record-of-rights to be prepared, of any local area, estate, or tenure or part thereof, "in any case," that is to say, whether the landlords and tenants concerned apply for the survey and record-of-rights or not; and it may, without the previous sanction of the Governor-General in Council, order a survey to be made, and a record-of-rights to be prepared, in the cases mentioned in sub-section (*2*), namely, (*a*) where the landlords or tenants, or a large proportion of them, apply for such an order, and deposit, or give security for payment of, the expenses; (*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally; (*c*) where the local area, estate, or tenure is managed by the Government or the Court of Wards, or by a manager appointed under section 95, *ante* (page 417); or (*d*) where a settlement of land-revenue is being made, or is about to be made.

When a survey and record-of-rights is to be accompanied by settlement of rents, and when not

In all cases in which a settlement of land-revenue *is not being* made, or *is not about to be* made, rents are settled by Revenue-officers only when the landlords or tenants concerned

[1] Paras. 100 to 104—*see* Selections, p. 29.
[2] *Ibid*, para. 100.

apply under section 105, *post*, for settlement of fair rents; but, when a settlement of land-revenue *is being* made or *is about to be* made, fair rents must be settled by Revenue-officers for all classes of tenants, whether the landlords or tenants apply or do not apply for a settlement of rents. Sections 191, 192, *post*, should be referred to.

Procedure for making a record-of-rights, deciding disputes, and settling rents under this chapter as it stood before the passing of Bengal Act III. of 1898.

The procedure for making a survey and record-of-rights, deciding disputes, and settling rents under this Chapter as it stood originally, was the same in cases in which a settlement of land-revenue *was being* made, and in cases in which a settlement of land-revenue *was not being* made, except that, in the former class of cases, the Revenue-officer took the initiative in settling rents for all tenants. In both classes of cases, the Revenue-officer was to record the existing facts as he found them; and, when a dispute arose, he was to decide it on the same grounds, by the same rules, and with the same procedure as a Civil Court. Similarly, Revenue-officers settled fair rents under this Chapter as it stood originally, in cases in which a settlement of land-revenue *was being* made or *was about to be* made, and in cases in which a settlement of land-revenue *was not being* made or *was not about to be* made, on the same grounds, by the same grounds, by the same rules, and with the same procedure as the Civil Courts.[1]

The intention of the Legislature was, that, under that procedure, all disputes affecting the record or the fixation of rents were to be formally and finally decided by the Revenue-officer subject only to appeal to a Special Judge, and to a second appeal to the High Court in certain specified cases.

It was found, however, by experience, when the settlement of rents was being made on a great scale (as was necessary when a settlement of the land-revenue of a large area was undertaken), that the adoption of the procedure of the Code of Civil Procedure

[1] Sir STUART BAYLEY's speech when moving that the Reports of the Select Committee be taken into consideration.—*See* Selections, p. 424.

entailed excessive expenditure and delay; for, strictly followed, it implied that each individual tenant's case (subject to modifications made by Government rules for joinder of tenants holding under the same landlord in the same village) should be dealt with separately, a separate record being made, and evidence being separately recorded, in each case. From the Revenue-officer's point of view, difficulties arose from the necessity of settling rents before the publication of the record, that is to say, before the particulars of the holdings had been definitely ascertained; and, when mistakes were made by them, they had no power of correcting them by revising their decisions.

It was also found that doubts and difficulties of procedure had arisen in the working of the Chapter as it originally stood. The Civil Courts held in some cases that Revenue-officers were bound to hear and decide all objections to entries in the records as civil suits, while, in others, it was held,[1] when Revenue-officers had heard and decided disputes following the procedure of the Code of Civil Procedure, that finality did not attach to their decisions, and that the parties could re-open in the Civil Court the questions decided by them. Where a survey was ordered to be made, and a record-of-rights prepared, of a particular estate or local area, the Courts held[2] that, when a dispute arose as to whether certain lands formed part of that estate or local area or not, the Revenue-officer had, under the Chapter as it originally stood, no jurisdiction to hear and decide the dispute; that, when a dispute arose as to whether land claimed rent-free was properly so held or not, the Revenue-officer had no jurisdiction to hear and decide the dispute; and that, when a dispute arose, as between one landlord and another landlord, or one tenant and another tenant, regarding the

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[1] *See Pandit Sirdar* v. *Meajan Mirdha* [1893], I. L. R., 21 Cal. 378; *Karmi Khan* v. *Brojo Nath Das* [1894], I. L. R, 22 Cal. 244; *Secretary of State* v. *Kajimuddy* [1895], I. L. R, 23 Cal. 257.

[2] *Narendra Nath Rai* v. *Srinath Sandel* [1891], I. L. R., 19 Cal. 641; *Bidhumukhi Debi* v. *Bhugwan Chunder Rai* [1891], I. L. R., 19 Cal. 643; *Padanand Singh* v. *Bajo* [1892], I. L. R., 20 Cal. 577; *Secretary of State* v. *Nitye Singh* [1893], I. L. R., 21 Cal. 38; *Karmi Khan* v. *Brojo Nath Das* [1894], I. L. R., 22 Cal. 244; *Pandit Sirdar* v. *Meajan Mirdha* [1893], I. L. R., 21 Cal. 378.

ownership or occupation of land, the Revenue-officer had no authority to hear and decide the dispute.

Procedure as modified by Bengal Act III. of 1898.

In this Chapter, as modified by Bengal Act III. of 1898, the distinction between objections and disputes and the methods of treating them are made clear. In the first instance, a record of existing rights and rents is to be made. This record is prepared after careful investigation on the ground, and a draft of it is published according to rules prescribed by the Local Government. Any objections that may be made under section 103A within a fixed time after this draft publication to any entry in or omission from the draft record, are considered and summarily disposed of by the Revenue-officer, according to rules prescribed by the Local Government. Up to the stage of publication of the draft record, the procedure under this Chapter, as amended, is the same in cases where a settlement of land-revenue *is* being made, and in cases where a settlement of land-revenue *is not* being made; but, in subsequent stages, the procedure and methods for final publication of the records, decision of disputes, and settlement of fair rents are differentiated.

Difference between procedure for decision of disputes where a settlement of land-revenue is being made and is not being made, respectively.

Where a settlement of land-revenue *is not* being made, the Revenue-officer, after having heard and summarily disposed of objections to any entry made in, or omission from, the draft record, finally publishes the record, and hears and decides disputes on application of the parties after the final publication, and notes his decisions in the record as finally published. His decision on a dispute where a settlement of land-revenue *is not* being made has the force and effect of the decree of a Civil Court in a suit between the parties, subject to appeal to the Special Judge.

Where a settlement of land-revenue *is* being made, the procedure is the same up to the stage of final publication; but the proceedings are terminated by that final publication, so far as the jurisdiction of the Revenue-officer is concerned, and he is not empowered to hear and decide disputes

after the record has been finally published. Any person dissatisfied with the entries made in the record (other than the entries concerning rents, which are specially dealt with) may institute a suit under the provisions of section 111A (*post*), may apply to the Board of Revenue for a revision of the record under section 104G (*2*) (*post*), or may seek his remedy in the Civil Courts under any other provision of the law that may prove to be applicable.

Difference in procedure for settlement of rent where a settlement of land-revenue is being made and is not being made, respectively.

The procedure and, to some extent, the principles for settlement of fair rents have also been differentiated by the amended Chapter where a settlement of land-revenue *is not* being made from those followed where a settlement of land-revenue *is* being made. In the former case, no fair rents are settled except upon the application of one or other of the parties after the final publication of the record, and Revenue-officers are still bound to follow the procedure laid down in the Code of Civil Procedure, and to be guided by the rules prescribed for the guidance of the Civil Courts in increasing or reducing rents. Their decisions as to the amount of rent settled have the same force and effect as decrees of the Civil Courts in suits between the parties (*see* section 107, *post*); and, subject to appeal to the Special Judge, and to revision by a Revenue-officer specially empowered in that behalf by the Local Government under section 108 (*post*), are final.

But, where a settlement of land-revenue *is* being made, a Settlement Rent Roll is prepared under Part II. (*post*), and incorporated with the draft record *before* the record is finally published, and Revenue-officers, in settling rents, are no longer bound to follow the Code of Civil Procedure. They may settle fair rents by accepting, as fair, the amounts agreed to between the landlords and tenants themselves, or by proposing amounts for the acceptance of the landlords and tenants, or by framing a table of rates, and basing fair rents on those rates (which may be higher or lower than existing rents), or by enhancing or reducing

existing rents according to the rules prescribed in the Act for the guidance of the Civil Courts in increasing or reducing rents (*see* section 104A, *post*), or partly in one of these ways and partly in another.

Appeals against decisions come to in the course of the preparation of the Settlement Rent Roll lie to the superior Revenue-authorities; and, after the incorporation of the Settlement Rent Roll with the record, and the final publication of that record, any aggrieved person may either apply to the Board of Revenue for a revision of the record under section 104G (*2*) (*post*), or, if he is dissatisfied with an entry in it of rent settled, or an omission to settle a rent, may institute a civil suit (within six months of the date of final publication of the record-of-rights, or of the date of disposal of his appeal to the superior Revenue-officers if an appeal has been preferred to them) on any of the grounds specified in section 104H (*2*) (*post*), namely, that the land is not liable to pay rent; or is liable to pay rent, but has been recorded as being rent-free; that the relation of landlord and tenant does not exist; that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of a particular estate or tenancy; that the tenant has been wrongly classified; or that the special conditions of the tenancy have been wrongly recorded or not recorded.

Briefly it may be said that, under the Chapter as it now stands, the final decision of disputes as to status, right, title, or incidents of tenures and holdings, is left to the Civil Courts where a settlement of land-revenue *is* being made, while the decision as to the *amount* of rents that are to be considered fair rests with the Revenue-authorities. But, where a settlement of land-revenue *is not* being made, the decision of disputes and settlement of rents still rest with the Revenue-officer, subject to appeal to the Special Judge, unless the parties prefer to ignore the jurisdiction of the Revenue-officer under sections

105, 105A, and 106 (*post*), and go to the Civil Courts for the establishment of their claims, subject to the provisions of sections 109, 111, 111A, and 111B.

Reasons for the said difference.

When the Bengal Tenancy Bill of 1885 was under consideration, the Government of Bengal was eager to place the Government under the same restrictions as the owners of permanently-settled estates in regard to the enhancement of rents. Hence, in the old Chapter X., no distinction was made between the procedure and principles for settling rents in permanently-settled estates, of which a survey and record-of-rights had been ordered, and in estates under settlement of land-revenue. It was proposed, when the Bill for amending the Chapter was introduced, that the new procedure for settlement of rents in areas under settlement of land-revenue should also be applicable in permanently-settled estates under survey and record-of-rights under the Chapter; but, as the Landowners' Associations, who were consulted, preferred the judicial procedure, with the guarantees which they thought were afforded by appeals to the Special Judge, to the new procedure, the proposal was withdrawn, and the judicial procedure was retained for the settlement of fair rents in permanently-settled estates. It is to be remembered in this connection that Revenue-officers may reduce rents as well as enhance them by the application of tables of rates under the new procedure where a settlement of land-revenue *is* being made, while rents cannot be reduced on the ground that the rates paid are above the prevailing rates where a settlement of land-revenue *is not* being made.

History of the Settlement Law in Bengal.

Land-revenue in temporarily-settled areas is such portion of the rents or "assets" as Government thinks fit to demand. Regulation VII. of 1822 (as amended by Regulation IX. of 1833), subject to the law as regards rent, was, until the passing of Act X. of 1859, the principal law under which settlements of land-revenue of temporarily-settled areas were carried on

in Bengal. In the preamble to the Regulation of 1822, Revenue-officers were said to be charged with the duty, not only of revising the public demand, but also of "ascertaining, settling, and recording the rights, interests, privileges, and properties of all persons and classes owning, occupying, managing, or cultivating the land." It was the intention of the Regulation, as stated in its preamble, that "the proceedings held, and the records framed by the Collectors when making settlements ....., should be such that all demands, claims, and suits may be adjudged and determined according to the facts therein stated until the same shall have been formally altered, or it shall be shown by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete." A record was to be framed of the rates per *bigha*, of each description of land, demandable from the resident cultivators, it being understood and declared that the decisions on the demands of the *zamindars* were to be regulated by the rates of rent and mode of payment avowed and ascertained at the settlement, and recorded in the Collector's proceedings, until distinctly altered by mutual agreement, or after full investigation in a regular suit.

In the absence of any provisions in the law strictly defining the powers of Settlement Officers, the Regulation was construed as enabling them to fix the rents demandable from the *raiyats* and tenure-holders at what, in the exercise of their discretion, they considered to be fair and equitable rates; and the rents recorded by them, as modified by the superior Revenue-authorities, were considered to be authoritatively fixed until altered by mutual agreement, or after full investigation in a regular suit.

In 1866, however, the High Court began to read the provisions of Act X. of 1859 into the Settlement Law of Lower Bengal, and it was ruled in a series of decisions[1] that in no

[1] *The Nawab Nasim of Bengal* v. *Ram Lal Ghose* [1866], 6 W. R. (Act X. Rulings) 5; *J. P. D'Silva* v. *Raj Coomar Dutt* [1871], 16 W. R. 153; *Enayetoollah Meah* v. *Nubo Coomar Sircar* [1873], 20 W. R. 207; *J. W. Leldie* v. *Sreemutty Doorga Monee Dossee* [1874], 21 W. R. 410.

case, whether in the settlement of a Government estate or of a temporarily-settled estate, could a Revenue-officer enhance the rent of an occupancy- *raiyat* without previously serving him with a notice stating the grounds of enhancement under section 17 of that Act; and, even then, if the tenant refused to sign the *jamabandi* or rent-roll in token of acceptance, Government or the *zamindar*, as the case might be, was obliged to establish the claim to enhancement *ab initio* by a regular suit before the Settlement-officer's rentals could be enforced. These suits became triable by Munsiffs under Bengal Act VIII. of 1869.

As the amount of land-revenue depends on the amount of rents, it has been argued that it necessarily followed that, if the Civil Courts had the power of determining rents in areas under settlement of land-revenue, they would practically have the power of fixing a *maximum* limit to land-revenue, which power Government, from the earliest times, has jealously reserved to itself.

In 1877, certain practical difficulties that arose in the way of carrying out large settlements in Midnapur drew attention to the subject, and Bengal Act VIII. of 1879 was the result. That Act provided (section 5) that rents recorded in settlement-proceedings as demandable from each *raiyat* should be in accordance with *general* rates to be sanctioned by the Revenue-authorities, but (section 6) that no occupancy-*raiyat's* rents should be enhanced save on one or other of the grounds specified in the Act; and (section 10) that suits to contest the rates should lie in the Civil Courts on the ground that the rent had not been assessed in accordance with the Act. The working of Bengal Act VIII. of 1879 was found to be attended with great practical difficulties.

When the Bengal Tenancy Act, 1885, was being passed, the Bengal Government, being desirous to retain for itself no advantages in increasing rents where a settlement of land-revenue was being made in temporarily-settled estates, or in its own estates, which it was not willing to concede to proprietors of

permanently-settled estates, agreed to the repeal of Bengal Act VIII. of 1879, and the procedure prescribed in the old Chapter X. of the Act of 1885 was substituted for settling rents in all cases in which a survey was being made and records-of-rights were being prepared. Regulation VII. of 1822 is, however, still in force, and *may* be had recourse to in making settlements of land-revenue, when it is not thought necessary to alter existing rents; but, as rents cannot be altered under that Regulation, it becomes necessary to resort to Chapter X. of the present Act in order to settle fair rents whenever it is thought desirable to alter existing rents for the purpose of ascertaining the assets on which the amount of the Government revenue to be demanded is to be based, and when it is desired to make an authoritative record-of-rights.

Settlement Law of Benga where the Bengal Tenancy Act is in force.

The Settlement Law of Bengal, where the Bengal Tenancy Act, 1885, is in force, is contained, therefore, in Regulations VII. of 1822, IX. of 1825, and IX. of 1833, read with the present Chapter, Parts I., II., and IV., and the rules framed by the Local Government and the instructions issued by the Board of Revenue in Chapter VI. of Appendix V. to this work (*infra*).

Importance of the rules made for working Chapter X. of the Bengal Tenancy Act.

The rules in the said Chapter VI. are of great importance, as, *inter alia*, they form a Code of instructions for the guidance of officers engaged in making settlements of land-revenue in any of the districts to which the Act extends. They are framed in virtue of the powers given by sections 189, 190, *post*.

The rules made by the Local Government have the force of law. The instructions of the Board of Revenue are supplementary to the rules under the Act, it being manifestly impossible to frame the latter in such detail as to form a complete manual for the guidance of officers in every particular. The Board's instructions have not the force of law, but Revenue-officers are bound, by Rule 1, Chapter I. of the Government Rules, to have regard to them, so far as they are consistent with the Act and the Government Rules.

The Bengal Survey Manual (1908) and Bengal Settlement Manual (1908) contain more detailed instructions for the guidance of officers engaged in the preparation of records-of-rights under this Chapter (X.).

Part I.—Record-of-rights.

Power to order survey and preparation of record-of-rights.

101. (*1*) The Local Government may, in any case, with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in respect of the lands in any local area, estate, or tenure, or part thereof.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following, namely—

Bengal Act I, 1907; E. B. Assam Act I., 1908.

[(*a*) where—

(*i*) the landlord or tenants, or

(*ii*) a proportion of not less than one-half of the total number of landlords, or

(*iii*) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate, or tenure, or part thereof, is not less than one-half of the total shares of all the landlords therein, or

(*iv*) a proportion of not less than one-fourth of the total number of tenants,

applies or apply for such an order, depositing, or giving security for, such amount for the payment of expenses as the Local Government directs ;]

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(*c*) where the local area, estate, or tenure, or the part thereof, belongs to, or is managed by, the Government or the Court of Wards, [or a manager appointed by the District Judge under section 95 ;] Bengal Act I., 1907; E. B. Assam Act I. 1908.

(*d*) where a settlement of land-revenue is being, or is about to be, made in respect of the local area, estate, or tenure, or of the part thereof.

Explanation 1.—The term "settlement of land-revenue," as used in clause (*d*), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(*4*) The survey shall be made, and the record-of-rights prepared, in accordance with rules made in this behalf by the Local Government.

The making of an order under this section suspends the jurisdiction of the Civil Courts in certain respects (*see* section 111, *post*). Bar of jurisdiction.

Processes comprised in a survey and record-of-rights.

The following processes are ordinarily comprised in a cadastral survey, record-of-rights, and settlement of rents or land-revenue :—

A.—Demarcation of boundaries and identification of lands.

B.—Measurement.

C.—Preparation of the record or *khanapuri*.

D.—Attestation of the record and determination of status and rents.

E.—Draft-publication of the record-of-rights.

F.—Disposal of objections after draft-publication under section 103A.

G.—Settlement of fair rents in cases in which a settlement of land-revenue is being, or is about to be, made.

H.—Final publication of the record-of-rights.

I.—Distribution of copies of the record-of-rights to parties interested, and recovery of costs (section 114).

J.—Settlement of fair rents on the application of the parties under section 105, and the trial of suits for the decision of disputes under section 106, in cases in which a settlement of revenue is not being, or is not about to be, made.

K.—Correction of *bonâ-fide* omissions or mistakes in the record-of-rights.[1]

Section 101 (2) (a) as modified by the Acts of 1907 (Bengal) and 1908 (E. B. Assam).

The Government of Bengal, in accordance with an opinion given by the Advocate-General, formerly acted on the assumption that half the landlords is "a large proportion" of them within the meaning of section 101 (*2*), clause (*a*) (as formerly worded). This view has now been embodied in the law by the latest Amending Acts.

The words "or tenants" were inserted by the Amending Act (Bengal Act III. of 1898), because there appeared then to be no reason why a large proportion of the tenants should not have the same power as a large proportion of the landlords of obtaining a survey and record-of-rights and settlement of

[1] Government Rules, Chapter VI., Rule 42, *post*, Appendix V. *See* also the Survey Manual (1908) and the Settlement Manual (1908), *passim*.

rents. It has now been definitely laid down by clause (*a*) (*iv*) of this section that one-fourth of the total number of tenants can apply for an order under this section.

Section 101 (1) and (2) (c): "estate or tenure or part thereof."

The words "estate or tenure or part thereof" were inserted in sub-section (*1*) and clause (*c*) of sub-section (*2*) of section 101 because doubt had been expressed in connection with the Behar Survey as to the meaning of "local area," and it was, by the inserted words, intended to make it quite clear that the Local Government can, under the prescribed conditions, order a survey to be prepared of any area, however large, or of any estate or tenure or part thereof, however small.

Section 101 (2) (d).

The words "or is about to be made" in clause (*d*) reproduce the amendment made by section 1 of Bengal Act V. of 1894, which was repealed by Bengal Act III. of 1898. The object of the amendment is to make it clear that a survey and record-of-rights and settlement of rents may be undertaken before the expiration of the period of a current settlement of land-revenue. It is manifest that the operations for recording rights and settling rents on which a new settlement of land-revenue is to be based cannot conveniently be postponed till the period of the old settlement has expired.

Explanation 1 to section 101 (2).

As some doubts had been raised on the question whether the term "settlement of land-revenue" included "settlement of fair rents" in estates and tenures held direct by Government, *Explanation 1* was added to section 101 (*2*) in order to make it clear that the term does include settlement of rents in such estates. *See* further the new proviso to section 104 (*post*) on this point, and sections 191, 192, *post*.

Explanation 2 to section 101 (2).

Doubts having been raised on the point whether, when a proprietor had leased his estate temporarily to a farmer, the proprietor could apply for a survey and a record-of-rights or settlement of *raiyats'* rents during the currency of the lease, he not being the *raiyats'* immediate landlord [*see* section 3, clause (*4*), *ante* page 51]. *Explanation 2* was introduced in order

to make it clear that a proprietor, by letting his estate or part of it temporarily to a tenure-holder, is not debarred from applying for a survey and record-of-rights and settlement of rents of the lands included in his estate. Nor is a *patnidar* or other superior tenure-holder, by sub-letting temporarily to an under-tenure-holder, debarred from applying for a survey and record-of-rights in respect of lands included in his tenure.

Section 101 (3).

When an order under section 101 has been issued by notification in the official Gazette, the notification is conclusive evidence that the order has been duly made; and therefore, if the notification was issued under sub-section (*2*), it is not open to any person to have the notification cancelled on the ground that any of the conditions enumerated in clauses (*a*) to (*d*) of the sub-section have not been fulfilled.

Section 101 (4): rules for the making of a survey and preparation of a record-of-rights.

The rules made by the Local Government as to the procedure to be followed by Revenue-officers in regard to the record-of-rights and settlement of rents will be found in Chapter VI. in Appendix V. to this work (*post*), which should be read with the instructions contained in the Survey and Settlement Manuals of 1908.

In particular, Rule 47 of Chapter VI. in Appendix V. (*post*) lays down that the record-of-rights shall be contained in the *khewat* and the *khatian* and such other papers as may be specified for any local area by a general or special order.[1]

Costs of survey and record-of-rights.

When the preparation of a record-of-rights is ordered in a case in which a settlement of land-revenue is being, or is about to be, made, *i. e.*, under clause (*2*) (*d*) of this section, the costs are borne by Government (*see* section 114, *post*). When a survey and record-of-rights of a local area is ordered with the previous sanction of the Governor-General in Council under section 101 (*1*), or by the Local Government under section 101 (*2*) (*b*), the costs are advanced by Government in the first

[1] Hence *khasras*, 'village notes,' etc., do not ordinarily form any part of the record-of-rights and the presumption of s. 103B does not ordinarily apply to the entries in them. As regards purely irrigation records, *see* s. 102 (*gg*) and s. 102A, *post*.

instance, and are afterwards recovered, in whole or in part, in such proportions as the Local Government may, under section 114 (*post*), direct.

The instructions of the Board of Revenue relating to the apportionment of costs will be found in the Bengal Settlement Manual, 1908, Chapter XIV., pages 146 to 150.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order; and may include, either without, or in addition to, other particulars, some or all of the following, namely— **Particulars to be recorded.**

(*a*) the name of each tenant or occupant;

(*b*) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy *raiyat*, or under-*raiyat*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation and quantity, and one or more of the boundaries, of the land held by each tenant or occupier;

(*d*) the name of each tenant's landlord;

[(*dd*) the name of each proprietor in the local area or estate;] **Bengal Act I., 1907; E. B. Assam Act I., 1908.**

(*e*) the rent payable at the time the record-of-rights is being prepared;

(*f*) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

Bengal Act I., 1907; E. B. Assam Act I., 1908, with retrospective effect from the commencement of Ben. Act III., 1898.

[(*gg*) the rights and obligations of each tenant and landlord in respect of—

(i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank, or well, or any other source of supply, and

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;]

(*h*) the special condition and incidents, if any, of the tenancy;

Bengal Act I, 1907; E. B. Assam Act I., 1908.

[(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;]

Formerly clause (i). Relettered (j) by the two Amending Acts—Bengal Act I, 1907; E. B. Assam Act I., 1908.

(*j*) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

The word "occupant" was introduced by the Amending Act (Bengal Act III. of 1898) to cover the case of persons holding rent-free without authority who may not be tenants, and that of squatters or trespassers who may be in unauthorized occupation of land without paying rent for it. The names of such persons have to be recorded though they are not "tenants," a note being made in the record-of-rights that they are trespassers, if they be really such. Clause (a).

The enumeration of classes of tenants in section 102 (*b*) of the Act as it stood originally was defective. The words "settled *raiyat*" have been inserted. The term "occupancy-*raiyat*" used in the Act does not cover "settled *raiyats*." An occupancy-right may be acquired by a new-comer by purchase, while the status of "settled *raiyat*" is acquired by cultivating any land in the village as *raiyat* for twelve years, or by inheritance from a *raiyat* who has done so.[1] Clause (b).

The expression, "one or more of the boundaries," was substituted for "boundaries," which meant all the boundaries. It is sometimes unnecessary to encumber the record with all the four boundaries of all the fields; and, in such cases, it adds unnecessarily to the expense to do so.[1] Clause (c).

The words, "at the time the record-of-rights is being prepared," were added to make clear the meaning of the law, as doubts had been raised whether "the rent payable" meant the rent payable in the future or in the past, or at the time the record is being prepared.[1] The expression "rent payable," in other clauses of the Act, means the existing rent, and not the rent that may be payable in future. Clause (e).

Clause (*j*) was added to make it quite clear that the Revenue-officer has authority to ascertain and record whether land is held rent-free or not, and whether the occupant is entitled to Clause (j) [formerly (i)].

[1] Statement of Objects and Reasons of the Amending Bill [1897], para. 23.

hold it rent-free. Revenue-officers had this authority under the old law of settlement.[1]

New clauses (1907, 1908).

The new clauses, (*dd*), (*gg*), and (*i*) were introduced as their necessity had become apparent during the course of various settlements. Clause (*i*), in particular, was meant to set aside a certain High Court ruling.[2]

What constitutes a record-of-rights.

In section 2 (*2*) of Bengal Act III. of 1895 (the Land Records Maintenance Act), the term "record-of-rights" is defined to mean "the settlement-record of tenant-rights called the *khatian*, or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue to form the record-of-rights for any district or part of a district. A record-of-rights includes entries duly made in a Register of Mutations." But this definition does not apply under the Bengal Tenancy Act. The expression "record-of-rights" is not explicitly defined in the latter Act; but it is implied by section 102 that a record-of-rights is the record of all, or of such, of the particulars mentioned in this section as may be specified by the order directing the survey to be made and the record-of-rights to be prepared without, or in addition to, any further particulars that may be specified in the order, such, for example, as the right to water for irrigation, or the right to have aqueducts or embankments maintained by the *zamindar*, where these things are conditions or incidents of the tenancy. By Rule 47 of Chapter VI. of the Rules made by Government under the Bengal Tenancy Act (printed in Appendix V., *post*), which have the force of law, the record-of-rights has been declared to be "contained in the *khewat* and the *khatian* and such other papers as may be specified for any local area by a general or special order."

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[1] Statement of Objects and Reasons of the Amending Bill [1897], para. 23.
[2] *Haro Mohan* v. *Pran Nath Mitter* [1900], I. L. R., 27 Cal. 364.

A detailed account of how the various particulars specified in section 102 are recorded in the Bihar Settlement Operations (Patna, Tirhut, and Bhagalpur Divisions) is given at pages 8 to 10 of the "Guide and Glossary" to these Settlement Operations published by authority in 1907. The Glossary gives (*inter alia*) the Vernacular equivalents adopted in the records-of-rights for the various definitions and descriptions of landlords and tenants with the incidents and conditions of their tenancies or other interests in the lands used in the text of this Act.

Meaning of Vernacular terms found in the records-of-rights.

In Appendix IV. (*post*) of this work is given a glossary of the terms used in the authorized Translations (Hindi and Bengali) of the Bengal Tenancy Act, 1885, and the rules framed under it.

With the aid of these two glossaries, Courts that refer to extracts from the records-of-rights should have no difficulty in ascertaining what exactly is connoted by the vernacular term employed in the records-of-rights.

Power to order survey and preparation of record-of-rights as to water.—Bengal Act I., 1907; E. B. Assam Act I., 1908.

[**102A**. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes regarding the use or passage of water,

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate, or tenure, or part thereof, in respect of—

(*a*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank, or well, or any other source of supply; and

(*b*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.]

This section was introduced in 1907 and 1908 to permit of the preparation of a record-of-rights and objections of landlords and tenants in regard to the use of water for agricultural purposes independently of a general record-of-rights initiated by an order under section 101, when such a course seems necessary for settling or averting disputes.

This section also applies to the passage of water through lands not benefited by it.

Power for Revenue-officer to record particulars on application of proprietor, tenureholder, or large proportion of raiyats.

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats*, of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure, or any part thereof.

Compare section 158, *post*, which enables a Civil Court to determine certain incidents of tenancies.

Meaning and intention of this section in the old Chapter X.

This section, in the form in which it stood in Act VIII. of 1885 as originally passed, was intended to empower a proprietor, and especially an auction-purchaser of an estate or a share of an estate, against whom the tenants had combined, to obtain a record of all or any of the particulars specified in section 102.[1]

[1] *See* "Selections" p. 424.

The next succeeding section (104) of the old Chapter X. laid down that, when, in any proceeding *under that Chapter*, either the landlord or the tenant applied for a settlement of rent, the Revenue-officer was bound to settle a fair rent. Section 105 of the old Chapter provided for the publication of draft records prepared under that Chapter, and section 106 laid down that, when a dispute arose before the final publication of a record prepared under the Chapter regarding any entry in, or omission from, the draft record published under section 104, the Revenue-officer was to hear and decide the dispute. As proceedings under section 103, and records prepared in the course of those proceedings, were proceedings taken and records made under the Chapter, it apparently followed necessarily that Revenue-officers were bound to settle fair rents and decide disputes in proceedings under section 103, as well as in proceedings under section 101, and that their decisions had the same effect as in proceedings ordered under section 101. The old rules under section 103 provided accordingly that Revenue-officers, in conducting operations under section 103, should proceed in accordance with the rules prescribed for the guidance of officers acting under orders made under section 101 for settlement of rents and decision of disputes. It has, however, been contended that Revenue-officers had no power to settle rents or decide disputes in proceedings under section 103 of the old Chapter X., and that a record of particulars under section 103 of that Chapter did not constitute a record-of-rights to be published in draft under section 103A, and therefore that its publication could not be followed by a settlement of fair rents or decision of disputes under sections 105 and 106. Part III. of the Chapter, as amended (*see* sections 105 and 106), requires the antecedent preparation of a record-of-rights. There appears to be no reason why a record of particulars made under the new section 103 should not constitute a "record-of-rights" just as much as a record of the same particulars would constitute such a record if made by order under section 101. In para. 24 of the Statement of Objects and

Reasons of the Amending Bill, the record of particulars under this section is designated a record-of-rights, and proceedings under the old section 103 were held[1] by the High Court to be suits, and rents were settled in proceedings under it. If a record of particulars under section 103 be a record-of-rights, it would follow that a Revenue-officer, in proceedings under this section, is bound to settle fair rents on application of the landlord or tenant under section 105 (*1*), and to decide disputes under section 106 in the same way as in proceedings under section 101.

Ruling of the High Court that a Revenue-officer could decide disputes and settle rents in proceedings under section 103 of the old Chapter X.

But, however this may be, the question of the power of Revenue-officers to settle rents and decide disputes in proceedings under section 103 of the old Chapter X. has been set at rest by later judgments of the High Court.[2] In the case referred to, it was held that, when an application was made by a proprietor or tenant of an estate or tenure under section 103 of the Bengal Tenancy Act before its amendment by Bengal Act III. of 1898, for the preparation of a record-of-rights, the Revenue-officer was competent to make a survey and measurement of the lands, and that the procedure to be adopted by him was to be the same as in the case of a proceeding under section 101, and that, where, in such proceeding, there was a denial of the relation of landlord and tenant, either by the landlord or the tenant, it was absolutely necessary for the Revenue-officer to deal with the question in order to enable him to make the necessary entries under section 102; but that the decision of the Revenue-officer did not operate as *res judicata* in a subsequent suit by the landlord for declaration of his title to eject the tenant, and for mesne-profits. The Honourable Judges remarked as follows:—

It has been contended for the appellants that, in the absence of an order of the Government under section 101 of the Bengal Tenancy Act, a Revenue-officer would have no authority to make any survey or prepare any record-of-rights upon an application made under section 103 of the Act

[1] *Achha Mian* v. *Durga Churn Law* [1897], I. L. R. 25 Cal. 146.

[2] Appeal from original decree No. 7 of 1899, decided on 13th August 1902—*Dharani Kanta Lahiry Chowdari*, plaintiff-appellant, *Gohar Ali Khan*, defendant-respondent [1902], 7 C. W. N., p. 33: I. L. R., 30 Cal. 339 (followed in *Sudhendu Narain Acharji* v. *Gobindo Nath Sircar* [1905]. I. L. R., 32 Cal 518: S. C., 9 C. W. N. 504).

inasmuch as the latter section contains no provision empowering him to do these things, or empowering the Local Government to authorize him by rule or otherwise to do them. It is argued that, under section 103, the powers of a Revenue-officer are limited to ascertaining the particulars specified in the last-foregoing section.....

It is urged that section 103 is entirely unconnected with the following sections in the same Chapter, so that, upon an application made under it, there can be no settlement of rent under section 104; the record made is not "a record made under this Chapter" within the meaning of section 105, and the Revenue-officer making it has no power to hear and decide disputes under section 106; nor would section 107, which provides that his decision, in proceedings for the settlement of rents and proceedings under section 106, shall have the force of a decree, apply to anything which he might do under section 103. It is contended that in any case, as the tenancy was not admitted, and the question was as to its existence, the Settlement-officer was not competent to decide that dispute at all. It is urged that any rules made by the Local Government under the provisions of section 189 of the Act, which purport to empower and direct an officer acting upon an application made under section 103 to proceed in the same manner as if he were acting under an order made under section 101, are *ultra vires*.

No authority has been cited to us to show that this Court has ever recognized such a distinction as it has now been sought to establish between proceedings taken under section 103 and those taken under section 101 of the Act.....Section 103 provides that, on the application of a proprietor or tenure-holder, a Revenue-officer may "ascertain and record," with respect to a particular estate or tenure or any part thereof, the particulars specified in section 102, that is, exactly the same particulars which may be required to be recorded under an order made under the provisions of section 101 "in respect of the lands in a local area."

The suggestion, that a proceeding under section 103 presupposes an order under section 101, seems to us to have no force.....Section 103 applies when the proprietor of a particular estate or the holder of a particular tenure requires for his own purposes an authoritative official ascertainment and record of the same particulars in respect of that estate or tenure or any part thereof as would be recorded under an order made under section 101. In order to be recorded, the particulars must first be ascertained, and, as the particulars to be recorded are the same, whether the record be made in consequence of an order of the Local Government under section 101, or upon an application by a pro-

prietor or tenure-holder under section 103, it seems difficult to see *à priori* why there should be any difference in the modes of ascertainment to be adopted in the two cases. Under Rule 47,[1] Chapter VI., of the Rules framed by the Local Government under the provisions of section 189 of the Act, a Revenue-officer, in conducting operations under section 103, shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101. We are unable to accept the contention that, because section 103 contains no express provisions for survey or measurement, a rule framed by the Local Government directing or empowering a Revenue-officer to make a survey or measurement must necessarily be *ultra vires*. The section empowers the Revenue-officer to "*ascertain*, subject to, and in accordance with, rules made in this behalf by the Local Government," the particulars to be recorded; and we think it must be taken that the Local Government is empowered to authorize the Revenue-officer to do any act not contrary to law which may be necessary to enable him to ascertain those particulars. Among the particulars in question are those specified in clause (*c*) of section 102, namely, "the situation, quantity, and boundaries of the land held by" each tenant. These are particulars which could not be accurately ascertained without survey and messurement.....Moreover, section 189 of the Act, under which the rules for the guidance of Revenue-officers were framed by the Local Government, expressly provides that, by such rules, the Local Government may confer upon any such officer, among other powers, that "to enter upon any land, and to survey, demarcate, and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875."

With regard to the application of section 104[2] to proceedings taken under section 103, we think that, as the former section, by its terms, applies to "any proceeding under this Chapter," that is, Chapter X. of the Act, it must be applicable to proceedings under section 103 equally with proceedings under section 101. Similarly, section 105 is, by its terms, applicable to a "record made under this Chapter," and a record of the particulars specified in section 102 seems to us to come within that description none the less when it is prepared upon an application made under section 103 than when it is the result of an order passed under section 101. It follows that sections 106, 107, and 108 are also applicable.....

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[1] That is, Rule 47 of the old Rules under s. 103. Rule 100 of the present Government Rules under the Tenancy Act, Ch. VI., App. V., *post*, is the corresponding rule.

[2] *I. e.*, s. 104 of the old Chapter.

We next come to consider the contention that, as the fact of the tenancy was not admitted by the landlords, and there was a question as to its existence, the Revenue-officer was not competent to decide that question.

We think that it is absolutely necessary for the Revenue-officer to deal with the question in order to enable him to make the necessary entries under clauses (*a*) and (*b*) of section 102 of the Act, that is, the entries relating to the name and *status* of the tenant. There is no provision in the Act requiring that the Revenue-officer shall stay his hand in the event of such a dispute being raised as that in question. He is, on the contrary, required by section 103 to ascertain for himself the particulars to be recorded under section 102; and we think that section 106 contemplates that he shall be competent to decide any dispute which may arise as to existing facts affecting the correctness of any entry which he proposes to make, or has made, under section 102. It may be, as in the present case, that the decision of the dispute may involve questions of law such as can ordinarily be dealt with only by the Civil Courts; but that consideration does not seem to us to have any weight in the face of the fact that a special jurisdiction has been conferred upon the Revenue-officer to deal with such disputes.

The view taken in this case has been followed in cases[1] subsequent to the Amendment Act of 1898.

Act III. (B. C.) 1898.

The proceedings under section 103, in the case the judgment in which is reproduced above, were instituted before Chapter X. was amended by Bengal Act III. of 1898; but the arguments of the Honourable Judges as to the power of Revenue-officers to decide disputes and settle rents appear to

Are Revenue-officers empowered to decide disputes and settle rents in proceedings under section 103 of the amended Chapter?

[1] The particulars specified in s. 102 of the Bengal Tenancy Act, when recorded and compiled under s. 103, amount to a "record-of-rights" as contemplated in Ch. X. of the Act; and proceedings taken by a Revenue-officer after making a record of the particulars under s. 103, including those under s. 105 of the Act, are not, therefore, void for want of jurisdiction.

Per PARGITER, *J.*—The difference between s. 103 of the old Act and the present section is, that, under the former, the Revenue-officer was to record the particulars specified in s. 102; but, under the present Act, s. 103 gives an applicant the right to select what particulars he may wish to have recorded. If the applicant asks that all, or almost all, the particulars mentioned in s. 102 be recorded, the record would constitute a "record-of-rights;" but, if only the particulars mentioned in cls. (*a*) and (*c*) of s. 102 be recorded, they not involving any rights, the record could hardly be called a "record-of-rights."—*Sudhendhu Narain Acharjya* v. *Gobinda Nath Sircar* [1905], I. L. R., 32 Cal. 518.

apply with equal force to the decision of disputes and settlement of rents under sections 105 and 106 in proceedings under section 103 of the amended Chapter. If a draft record of particulars under section 103 be a draft record-of-rights, and if such draft record-of-rights be finally published under section 103A (*2*), and a dispute arises regarding any entry in, or omission from, it, or if an application for settlement of fair rents is made under section 105 within two months of the final publication of the record, it would appear to follow that the Revenue-officer is bound to decide the dispute under section 106, or to settle fair rents under section 105, as the case may be, since the case would be one under Part III., in which "a settlement of land-revenue *is not being*, or *is not about to be*, made."

Intention of the alterations made in the new section 103.

It was not intended by the alterations made in section 103 by the amending Act to change the previous substantive law and procedure under the old Chapter regarding the decision of disputes and settlement of rents under section 103, the intention being to enable an auction-purchaser of a fractional share, against whom the other co-sharers and the tenants may have combined, to obtain a survey and record-of-rights.

Are the decisions of Revenue-officers in proceedings under section 103 of the old Chapter *res judicata?*

In another case, the facts were as follows: During the preparation of a record-of-rights of an estate under section 103 of the Bengal Tenancy Act by a Settlement Officer, the landlord put in a petition, under section 104, sub-section (*2*), of the old Chapter X., for the settlement of the rent of a certain tenant's holding. The tenant, notwithstanding the fact that notice was served upon him, did not adduce any evidence, and the Settlement Officer decided that the tenant was an occupancy-*raiyat*, and fixed a fair and equitable rent for the holding. Against this decision of the Settlement Officer, no appeal was preferred to the Special Judge. Subsequently a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding, *i. e.*, whether

the rent was enhanceable or not, determined. The defence of the landlord was, that, having regard to the decision of the Settlement Officer, the question could not be re-opened. It was *held* that, under the provisions of section 104, sub-section (*2*), and section 107, of the old Chapter X., the decision of the Settlement Officer amounted to a decree; and that the matters determined by that decision could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decision became final, and the questions decided in that suit could not be re-opened in the new suit.[1]

In the case[1] referred to, the proceedings were instituted under section 103 after the amendment of Chapter X.; the power of a Revenue-officer to make a record-of-rights and to settle rents in proceedings under section 103 was not questioned; and it was ruled that the questions decided by the Revenue-officer could not be re-opened in a suit in the Civil Court. *See* sections 111, 111A, and 111B, *post*, in this question, and Notes to section 103A, *post*.

Reasons for the insertion in section 103 of the words "one or more."

The words "one or more" were inserted in this section by the amending Act, III. (B. C.) of 1898. Under the old section, all the co-sharers, proprietors, or tenure-holders were bound to apply for a record of the particulars. It was thought that there was no reason "why an obstructive co-sharer should have power to prevent other co-sharers from obtaining a survey and record-of-rights if they wish to do so" (*see* Statement of Objects and Reasons, para. 24).

Rules for guidance of Revenue-officers.

The rules for the guidance of Revenue-officers taking action under this section (no order of the Government being necessary) are given in Chapter VI., Appendix V. (*post*), Rules 91 to 100.

Apparently, the suspension of the jurisdiction of Civil Courts consequent on the issue of an order under section 101 (*see* section 111, *post*) is not a consequence of the initiation of proceedings under section 103.

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[1] *Durga Churn Law* v. *Hateen Mandal* [1902], I. L. R., 29 Cal. 252.

Preliminary publication, amendment, and final publication of record-of-rights.

103A. (*1*) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner, and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(*2*) When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 104F., sub-section (*3*), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(*3*) Separate draft or final records may be published under sub-section (*1*) or sub-section (*2*) for different local areas, estates, tenures, or parts thereof.

Origin of section.

This section reproduces section 105 of the old Chapter X. with additions and modifications.

Rules.

"Prescribed" in this Act means prescribed from time to time by the Local Government by notifications in the official Gazette [*see* section 3, clause (*15*), *ante*, page 53]. The manner and period for publication of draft and final records are prescribed in Rules 62, 79, and 80 of Chapter VI. in Appendix V. to this work, *post*. *See* also Chapters IV. and VIII. of the Bengal Settlement Manual, 1908.

Sub-section (*3*).

Sub-section (*3*) was enacted by the amending Act (Bengal Act III. of 1898) because doubts had been raised whether, when a local area had been notified for survey and record-of-

rights, it was not necessary that the record of the whole area notified should be published together, and at the same time. This sub-section makes it clear that it is not necessary to publish the record for the entire area at the same time.

It has been laid down that, when a record-of-rights has been published piecemeal, the latest date of publication of any part of it should be taken to be the date of publication for computing the time allowed for filing applications under section 105 and disputes under section 106, *post*.

It has been ruled[1] that suits will not lie in the Civil Courts for the alteration of entries in a record-of-rights. The special procedure of this chapter should be followed. But declaratory suits may be filed and are maintainable.[2] Compare section 106 (*2*), 107, 111, 111A (proviso), and 111B on this point.

Presumption as to final publication and correctness of record-of-rights. Bengal Act I., 1907, only.

[103B. (*1*) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied; and a certificate signed by the Revenue-officer, or by the Collector of any district in which the local area, estate, or tenure or part thereof, to which the record-of-rights relates, is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(*2*) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village

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[1] *Jogendra Nath Roy* v. *Krishna Promoda Dassi* [1908], I. L. R., 35 Cal. 1013.

[2] *Golab Misir* v. *Kumar Kalanand Sing* [1910], 14 C. W. N. clxxv.

included in such area, and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.]

Certificate of, and presumption as to, final publication, and presumption as to correctness, of record-of-rights.— E. B. Assam Act I., 1908, only.

[103B. (1) When a record-of-rights has been finally published under section 103A. the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order, prescribe, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication or, in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure, or part thereof, to which the record-of-rights relates, is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication, and of the date thereof.

(3) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a, record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be

presumed to have been finally published unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.]

By the Amending Acts of 1907, 1908, section 103B was modified so as to define more exactly the evidential value of entries in records-of-rights duly prepared and finally published in accordance with this Chapter and the Rules framed thereunder.

Conclusive proof of final publication of a record-of-rights.

Notifications are now published regularly by the Local Governments concerned in the respective official Gazettes as contemplated by clause (2) of this section. This will lessen the difficulty of proving that the record-of-rights was finally published whenever such publication is disputed. *See* Rule 80, Chapter VI., Appendix V., *post*. *See* also notes on section 147B, *post*.

Results of the amendments made in the former law.

Under the section as amended, every entry in the record as finally published is evidence of the matter referred to in that entry, and is presumed to be correct. If, after final publication of the record, any person feels aggrieved by an entry in, or omission from, the record, he can, where a settlement of land-revenue *is not* being or about to be made, institute a suit before the Revenue-officer under section 106, appealable under section 109A; or go direct to the Civil Court subject to sections 109, 111, 111A, and 111B: and he can, where a settlement of land-revenue *is* being or is about to be made, appeal to the Revenue-authorities under section 104G or institute a suit in a Civil Court under section 104H or section 111A, or under any other law that may be deemed applicable.

Rulings by High Court illustrating the presumption raised by section 103B.

Where a record-of-rights made under Chapter X. as it then stood was finally published in January, 1894, and a suit was brought for rent for 1895 to 1897, it was held[1] that the rate of rent which the plaintiff was entitled to claim was that stated in the settlement-proceedings, which were part of the record, and that a decree for rent for 1886 to 1890 could not affect the rate.

The presumption under section 109 of the old Act (now 103B), in favour of the accuracy of an undisputed entry as to rate of rent, is sufficiently rebutted by the decree in a contested suit[2] *inter partes* showing a different rate.

Section 109 (now 103B) of the Bengal Tenancy Act lays down a rule of evidence; it does not override the rules of *res judicata* which are of general application.[2]

It has been held[3] that the presumption of correctness attaching by section 103B (*5*), to entries in the record-of-rights, continues, and that these entries should be regarded as evidence as to the rent payable, even though decrees were passed in rent-suits at a date subsequent to that of the final publication of the record-of-rights awarding a different rent. It appeared, however, that the Courts had not considered the entries in the record-of-rights (of 1898) before passing the decrees in the former rent-suits (in 1901), the decisions in which were put in as '*res judicata*' in subsequent rent-suits. The High Court ordered a re-trial, directing that the entries in the record-of-rights should be considered.

The presumption that certain persons held a tenure jointly, arising from an entry in a *khewat* to that effect, is sufficiently rebutted by proof that, for sixty years, these persons had separately held possession of their respective plots on payment of separate rents.[4]

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[1] *Raja Pudmanund Singh* v. *Ghaneshyam Misser* [1902], 6 C W. N clx.
[2] *Ghaneshyam Misser* v. *Padmanand Singh* [1905] I. L. R., 32 Cal. 336.
[3] *Sarifunissa* v. *Sasadhar Mulik* [1909], 14 C. W. N. 364.
[4] *Rajnarain Mitra* v. *Ananta Jarai* [1906], 10 C. W. N. 908.

A suit for declaration of his rights brought by a party whose objection under section 103A had been dismissed is not governed by art. 14, First Schedule of the Limitation Act (IX. of 1908). It is not necessary to bring a suit to avoid a presumption.[1]

Until section 108A was added to this Act, a Revenue-officer had no power to alter entries as to status, &c., once finally published, unless after a suit under section 106. Section 108 did not give him any such power.[2]

Part II.—Settlement of Rents, Preparation of Settlement Rent Roll, and [Disposal of Objections] in cases where a Settlement of Land-revenue is being or is about to be made.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

Difference between Part I. and Part II.

Part I. of this Chapter applies to all surveys made and records-of-rights prepared under the Chapter, whether a settlement of land-revenue is or is not being made, or is or is not about to be made, of the area under survey. Part II. (*i. e.*, sections 104 to 104J inclusive) describes the procedure, methods, and principles to be followed in settling rents, preparing Settlement Rent Rolls, and disposing of disputes, where a settlement of land-revenue *is being* made or *is about to be* made, all of which have been differentiated from the methods and procedure to be followed where a settlement of land-revenue *is not being* made or *is not about to be* made.

Changes in procedure for decision of disputes, where a settlement of land-revenue is being made or is about to be made.

The changes made by Part II. in the procedure for the decision of disputes *where a settlement of land-revenue is being made or is about to be made*, with the reasons for them, were described in the Statement of Objects and Reasons to the Amending Bill of 1897 thus:—

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[1] *Ramgulam* v. *Bishma Pargash* [1906], 11 C. W. N. 48.
[2] *Shambu Chandra Hazra* v. *Purna Chandra Pal* [1907], 12 C. W. N. 122.

2. The intention of the framers of the Tenancy Act, as explained in Council by Sir STUART BAYLEY, when presenting the report of the Select Committee, clearly was *that all disputes affecting the record-of-rights or fixation of rents* were to be formally and finally decided by the Revenue-officer, subject only to appeal to the Special Judge, and to a second appeal to the High Court in certain specified cases. Entries in the record, which were not disputed up to the time of final publication of the record, were to be presumed to be correct till the contrary was proved. If a dispute as to any entry in, or omission from, the record arose, it was to be decided by the Revenue-officer, and his decision was to have the force and effect of a decree. So that every entry in the record as finally published was to have attached to it either (*a*) the presumption of correctness or (*b*) the force and effect of a decree of a Civil Court. Objections might be made at any time during the publication of the draft record, which the Revenue-officer was to summarily hear and consider; and disputes raised at any time before the final publication of the record were to be heard and decided. The distinction between an objection and a dispute was not, however, clearly defined, and the result has been that the Civil Courts have in some cases held that the Revenue-officer is bound to hear, as civil suits, trifling objections which can be adequately disposed of summarily, to the satisfaction of the parties, without the expense and delay entailed by the formal procedure of a civil suit. On the other hand, where Revenue-officers have heard and decided disputes, following the procedure of the Civil Procedure Code, in which cases it was intended that their decisions should, subject to appeal to the Special Judge, be *res judicata* between the parties, the Civil Courts have in some cases held that their decisions, though not appealed against, were not *res judicata;* that no finality attached to them; and that it was open to the parties to re-open the questions decided in the ordinary Civil Courts.

3. Further, the Courts have held, where a survey is ordered to be made, and a record-of-rights prepared, of a particular estate or local area, and a dispute arises as to whether certain lands formed part of that estate or local area, that the Revenue-officer has no jurisdiction to hear and decide the dispute, and that, when a dispute arises as to whether land claimed rent-free was properly so held or not, the Revenue-officer has no authority to hear and decide the dispute; and again that, when a dispute arises as between one landlord and another landlord, or one tenant and another tenant, regarding the ownership or occupation of land, the Revenue-officer has no authority to hear and decide the dispute.

It has, in short, been held that the Revenue-officer can only hear and decide a dispute between a landlord and tenant when the relationship of landlord and tenant is proved or admitted to exist.

4. The effect of these decisions is to curtail to a very great extent the power of the Revenue-officer to decide disputes arising out of his proceedings, to leave gaps in the record-of-rights, and to drive the parties to litigation after the Revenue-officer has left the ground, even as regards matters which he has nominally decided.....

5. It is clear that the decisions of the Civil Courts above referred to in paras. 2 and 3 are not in accord with the intention of the framers of the Act....., and it is thought that, if the decisions of Revenue-officers are not, subject to appeal to the Special Judge, to have finality on all questions that come before them, it is desirable to relieve them altogether of the duty of deciding disputes as civil suits, and to confine them, in the first place, to the preparation of a record of existing facts, rents, and status. This record will be prepared, after careful investigation, under such rules as the Local Government may prescribe. It will be published in draft; objections made to any entry in, or omissions from, it will be carefully considered and disposed of under such rules as may be prescribed by Government; then it will be finally published, and the presumption of correctness will be attached to entries made in it. If the parties afterwards wish to dispute the correctness of any entry or omission, they can do so in the Civil Courts, restrictions on resort to the Courts being imposed only in the case where the entry relates to a rent settled.

The Member in charge of the Bill (the Hon'ble Mr. Finucane) further explained the changes made in the procedure for decision of disputes, *where a settlement of land-revenue is being made or is about to be made*, thus :[1]—

I now proceed to state reasons why the first of the changes mentioned above, namely, the transference of the decision of disputes to the Civil Courts, is proposed. The framers of the Act of 1885 thought that, on a Revenue-officer beginning a record-of-rights, he would find himself face to face with numerous cases in which, on the one side or the other, the status of the *raiyat*, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes, the record would, they thought, be of little value; and it was,

[1] Bengal Council Proceedings, 1897, p. 149.

in their opinion, obviously absurd to empower one officer to settle the question of status and area, and then to send another to settle the question of rent. It appeared to them equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes, and then to allow the whole matter to be re-opened from the very beginning in a Civil Court.

The natural result of such a course must, it was supposed, be to leave behind the Revenue-officer a crop of litigation for the Civil Courts to deal with after the Revenue-officer had left. Hence the Select Committee on the Tenancy Bill empowered the Revenue-officers to decide all disputes that might arise out of their own proceedings instead of leaving them over for the decision of the Civil Courts.

It will be asked, why is it now proposed to depart from the conclusion then come to in this respect? The answer is—*first*, that the Revenue-officers themselves have, in recent years, declared that the burden of deciding questions of possession, status, right, and title, following the procedure of the Civil Procedure Code, is too heavy for them, and have begged to be relieved of it; and, *secondly*, that the High Court have declared that the class of officers employed on survey and settlement-proceedings are unfit for the work of deciding questions of status, right, and title.

In one of their judgments, the Hon'ble Judges of the High Court expressed the opinion that the Legislature could not have intended to transfer civil suits as to rights in land between tenant and tenant to the Revenue-officer, and in another they declared that they did not think that the Legislature contemplated the formidable result that officers, such as those entrusted with the duty of preparing records-of-rights, should be permitted to inquire into disputes as to the titles to land of indefinite extent.

It will be shown presently that the intention of the Legislature in reality was, that Revenue-officers should inquire into and decide all disputes coming before them. But, however that may be, the proposals now made in this respect are in accordance with the views of the Hon'ble Judges, as enunciated in the decisions to which I have referred; and, as they are also in accordance with the wishes of the Revenue-officers concerned, it is hoped that they will meet with general approval.

The sole objection to this part of the Government proposals is in this—that, as the authors of the Tenancy Act feared, the Revenue-officers

will leave after them disputes which they have raised, but not finally settled; and, as these disputes will, if the parties wish to have them decided at all, have to be decided by the Civil Courts, the suitors, especially those of the poorer classes, may find the cost of litigation in the Civil Courts much higher, and the results not more satisfactory than the decisions of the Revenue-officers have been. This is, no doubt, a serious risk; but the difficulties put in the way of Revenue-officers by the decisions of the superior Civil Courts are so great that some change in the law is considered clearly necessary, and no more satisfactory solution of the problem has, in the opinion of Government, been suggested than that now proposed in the Bill.

Changes in procedure for settlement of rents where a settlement of land-revenue is being made or is about to be made.

The changes made by Part II. in the procedure, methods, and principles for settlement of rents *where a settlement of land-revenue is being made or is about to be made* were described in the Statement of Objects and Reasons to the Amending Bill of 1897 thus:—

6. Section 107 of the Act provides that, in all proceedings for the settlement of rents under Chapter X., the Revenue-officer shall, subject to rules made by the Local Government, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits. This implies that each individual case must (subject to modifications made by the Government rules for joinder of tenants holding under the same landlord in the same village) be dealt with separately, a separate record being made, and evidence being separately recorded, in each case. When a settlement of rents is being made on a great scale, as is necessary when a settlement of revenue is being made of a large area or in a large private estate, it is apparent that to make the rent of each individual tenant the subject of a separate suit must involve great waste of time and money. If an enhancement or reduction of rent is claimed on the ground of rise or fall of prices since the rents were last fixed, it is obvious that the alteration in prices, if once established for a local area, would affect all tenants in that local area, whose rents were last settled, at the same time, and it would involve unnecessary waste of time and money to record the evidence over again, and allow it to be disputed afresh in each individual case.

7. It has always been recognized that Government officers, in settling rents for the purpose of ascertaining the assets on which revenue is to be based in temporarily-settled estates, would have more discretion in the matter of altering rents than was allowable to private individuals

in suits in the Civil Courts. The Bengal Government, however, in 1885, with a view to showing that they claimed nothing in the way of enhanced rents in their own estates, or in estates under settlement of revenue, which they were not prepared to concede to private landlords, consented to have the same rules and the same procedure applied to their own estates as were proposed for fixation of rent in private estates; but apparently the difference was not sufficiently considered, between the difficulties of a settlement of rents on a great scale and a settlement of rents of individual tenants by a Revenue-officer or Civil Court. In individual cases, it is easy to follow the procedure of the Civil Procedure Code; but, where hundreds of thousands of tenants' rents have to be settled, it is most difficult, if not impossible, to follow the Civil Procedure Code, and to complete the proceedings within a reasonable time at a reasonable expenditure. It is not now, however, proposed to differentiate between the settlement of rents in Government and that in private estates.....

8. What is proposed is a procedure which will facilitate settlement of rents on a large scale without unnecessary expense, and without materially altering the substantive provisions of the Act regulating enhancement or reduction of rents.

9. The endless variety of local conditions in a vast Province like Bengal—containing, as it does, in one place or another, every form of land-tenure known in India, from the primitive system of Chota Nagpur and Angul analogous to that of the Central Provinces on one side to the Bihar system analogous to that of the North-Western Provinces on another, to the highly complex and intricate system prevailing in Chittagong and Backergunge in a third direction, and to the *raiyatwari* system prevailing in Government estates analogous to the Madras and Bombay systems in other directions—is so great that no one system of settling rents will work well in all parts of the Provinces alike.

10. Hence it is thought desirable to make the method of settling rents more elastic than it is at present, and this has been provided for in the new section 104A inserted in the Bill. That section enables the Revenue-officer to settle rents by compromise, with the assent of the parties, when satisfied that the rents agreed upon are fair and equitable; or to propose rents which, if accepted, may be settled as fair; or to frame a Table of Rates, where the conditions are such as to render this practicable, and to apply the rates to areas resulting from survey; or to maintain the existing rents; or to enhance or reduce them on the grounds specified in the Tenancy Act.

11. The system of framing Tables of Rates was abandoned when the Tenancy Act was being passed, because it was thought to be generally impracticable; but it was admitted at the time that there were some areas in which it was practicable to frame Tables of Rates. It is believed that this is the case in parts of Orissa, to which province the Tenancy Act was not extended when passed. The provisions of the Bill for framing Tables of Rates follow to a large extent the proposals of the Rent Commission and those of the Bill of 1884. The other provisions for settling rents are in accordance with the present law, with some modifications noticed below.

12. An important change is proposed in procedure, namely, to transfer the control and supervision of Revenue-officers, when preparing the record-of-rights and fixing the amount of the rents, to the Revenue-authorities in the first instance. This is subject, however, to the provisos that entries relating to possession, status, title, &c., in the record-of-rights may be called in question in the Civil Courts, as they are to have only presumptive correctness (*see* the new section 103B), and that entries of rent settled, in the Settlement Rent Roll, may be also called in question in the same Courts on certain specified grounds noted in the margin.* If the Civil Court finds that any such entry is incorrect, it shall itself specify what correction is to be made, and shall not refer the matter back to the Revenue-officer (*see* the new section 111A). The Bill, therefore, enlarges rather than curtails the powers of the Civil Courts. Questions of status, title, &c., which, under the Act, were intended to be finally decided by the Revenue-officer subject to appeal to the Special Judge, are now to be explicitly left for final decision to the Civil Courts. As to questions of rent settled, there was, under the Act, an appeal from the Revenue-officer to the Special Judge, but no appeal from the Special Judge to the High Court. The Bill transfers the right of appeal on these questions, in the first instance, from the Revenue-officer to the confirming Revenue-authorities, but, even as regards rents settled, does not altogether ex-

(*a*) that the land is not subject to the payment of rent;
(*b*) that the land, although entered in the record-of-rights as being held rent-free, is subject to the payment of rent;
(*c*) that the relation of landlord and tenant does not exist;
(*d*) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
(*e*) that the tenant belongs to a class different from that to which he is shown as belonging in the record-of-rights or Settlement Rent Roll;
(*f*) if the land is not comprised in an area, estate, or tenure in respect of which a settlement of land-revenue is being or is about to be made, that a rent different from that shown in the Settlement Rent Roll has been fixed by a contract which is legally binding on the parties, and has been brought to the notice of the officer preparing the Settlement Rent Roll, and that such officer has not postponed the operation of the settled rent under the provisions of section 111D, or has wrongly fixed the date from which it is to take effect.

clude resort to the Civil Courts, for it gives them jurisdiction, which they had not under the Act, in the large class of cases referred to in the margin.*

* See marginal notes on previous page.

13.....If, for the reasons given above in paras. 2 to 5,[1] it is desirable to withdraw the judicial procedure and appeal to the Special Judge so far as proceedings before the Revenue-officer for the decision of disputes are concerned, it is manifestly more so in the matter of settling rents, which, as the Select Committee remarked, "it is universally admitted, cannot be adequately dealt with, either in the first instance, or on appeal, except after local inquiry by persons possessed of special technical knowledge." The Revenue-authorities are the best judges of economic facts, as the Select Committee held; and all that is now proposed is to restore to them their proper jurisdiction, while reserving all questions of right and title for the Courts. Provision is at the same time made (*see* section 9 of the Bill[2]) for giving to the settlements of rents and decisions of disputes hitherto made by Revenue-officers, under the law as it stands, that finality which, subject to appeal to the Special Judge, it was intended by the framers of the Act that they should have.

It is to be remembered that the preceding remarks only apply, so far as regards the Act (Bengal Act III. of 1898) as passed, to cases in which a settlement of land-revenue is being made or is about to be made. As regards the Bill as introduced in Council, they were applicable to the settlement of rents in all cases, whether a settlement of land-revenue was being made or was not being made.

Why the Government of Bengal decided to have all rents settled where a settlement of land-revenue is being made.

The Government of Bengal, when the Bengal Tenancy Act, 1885, was being passed, undertook to settle fair rents for all tenants in areas under settlement of land-revenue, the rents so settled to be realisable in the Civil Courts, because it was considered fair to the landlords that the rentals on which land-revenue is based should be authoritatively settled, and be capable of realisation through the Courts before the land-revenue demand was based on them. Were the rents not to be authoritatively settled, it was thought that Government might assess

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[1] *Ante*, pp. 460 461.
[2] Now s. 9 of Bengal Act III. of 1898, printed under s. 115, *post*.

its land-revenue on a certain percentage of assumed rentals when there was no real guarantee that the landlords could realize those rentals.

Since, then, some other Local Governments and Administrations have, to some extent, adopted the same principle. In the United Provinces of Agra and Oudh, the Settlement-officer, under an Act subsequently passed (United Provinces Act III. of 1901, section 87), is bound, on the application of the landholder, or of an ex-proprietary or occupancy-tenant, to determine and fix the rents payable by such tenants, and *may* do so of his own motion if he thinks fit. He is not, however, bound to determine and fix the rents of all classes of tenants.

Settlement of rents and preparation of Settlement Rent Roll when to be undertaken by Revenue-officer.

104. In every case in which a settlement of land-revenue is being or is about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (*1*),—

(*a*) settle fair and equitable rents for tenants of every class,

(*b*) notwithstanding anything contained in section 192, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause [(*j*)] of section 102, that the occupant is not entitled to hold it without payment of rent, and

Bengal Act I., 1907; E. B. Assam Act I., 1908.

(*c*) prepare a Settlement Rent Roll:

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government if it does not appear to the Local Government to be expedient that he should do so.]

It will be noted that the Revenue-officer is *not* bound to consider the existing rent 'fair and equitable' in proceedings under this Part (II.) of Chapter X. [*see* section 104A (*1*) (*d*), below].

Clause (a). As under-*raiyats* are tenants [*see* section 3 (*3*), *ante*, page 58], fair rents should be settled for under-*raiyats* unless in cases covered by the newly-added proviso.

Clause (b). When a landlord of a temporarily-settled estate granted a lease purporting to entitle a tenant to hold land rent-free, and, during the currency of the lease, a fresh settlement of land-revenue was being made, or land-revenue was for the first time being made payable, the Revenue-officer could, under the old law, settle a fair rent for the land, only on the application of the landlord or tenant. Under clause (*b*) of section 104 of the present Act, he is bound to settle a fair rent, whether the landlord or tenant applies for such settlement or not, if he has recorded, in pursuance of clause (*j*) of section 102, that the occupant is not entitled to hold the land without payment of rent. *See* also the recent addition to section 192, *post*.

Clause (c). As to the preparation of Settlement Rent Rolls and the finality of rents thus settled, *see* sections 104A to 104J, following.

Procedure for settlement of rents and preparation of Settlement Rent Roll under this Part.

104A. (*1*) For the purposes of settling rents under this Part, and preparing a Settlement Rent Roll, the Revenue-officer may proceed in any one or more of the following ways, or partly in one of those ways, and partly in another, that is to say—

(*a*) if, in any case, the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and, if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;

(*b*) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and, if the amount so proposed is accepted, either orally or in writing, by the tenant, and, if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;

(*c*) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing, for any local area, estate, tenure, or village, or part thereof, or for each class of land in any local area, estate, tenure, or village, or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and *raiyats* and under-*raiyats*, of each class, he may frame a Table of Rates, and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;

(*d*) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (*1*), or by enhancing or reducing such rentals: Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both in-

clusive), 38, 39, 43, 50 to 52 (both inclusive), 180, and 191.

(2) The Settlement Rent Roll shall show the name of each landlord, and of each tenant, whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Change made by section 104A.

The methods prescribed in clauses (*a*), (*b*), and (*d*) are in accord with the principles laid down in the old Chapter X., but that prescribed in clause (*c*) was introduced in 1898.

Clause (a).

If the landlord and tenant agree between themselves as to the amount of fair rent, the Revenue-officer has to satisfy himself that the rent agreed upon is fair and equitable, and, if satisfied that it is fair and equitable, but not otherwise, he may accept it as the fair rent. If the rent agreed upon is in his opinion too low, it is obviously necessary, where a settlement of land-revenue is being made or is about to be made, that he should be empowered to reject it, for, rent being the basis of land-revenue, if the parties collusively or fraudulently agreed to a rent that was too low, and the amount agreed upon were to be accepted without scrutiny, the amount of land-revenue would be affected by their collusive or fraudulent action. On the other hand, if the rent agreed upon should be, in his opinion, too high, the Revenue-officer is given power to disallow it as inequitable, therein following the principle of section 35, *ante*, page 208.

Clause (b).

The Revenue-officer may himself propose what he deems to be a fair rent, and, if it is accepted by the parties, there is manifestly no reason why it should not be recorded as the fair rent.

Clause (c).

As to Tables of Rates, *see* the notes to sections 104B to 104D, following.

Clause (d).

When the parties have not agreed between themselves as to the amount of fair rents, or the Revenue-officer does not accept the amount agreed upon as fair under clause (*a*), or the parties

do not accept the rents proposed by the Revenue-officer under clause (*b*), or when the circumstances are such that a Table of Rates cannot, in the opinion of the Revenue-officer, be prepared under clause (*c*), then the Revenue-officer has to settle fair rents under clause (*d*), that is to say, he is to start with the existing rent, and maintain or enhance or reduce it, as the case may be, having regard to the principles laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rent, where this course seems necessary, to arrive at a fair and equitable rent. *See* also section 192 (*post*) as amended.

Contents of Table of Rates.

104B. (*1*) If a Table of Rates is prepared, it shall specify—

(*a*) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is, in the opinion of the Revenue-officer, necessary or practicable to fix a rate or different rates of rent; and

(*b*) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

Local publication of Table.

(*2*) When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure, or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

Revenue-officer to deal with objections.

(*3*) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection, and may alter or amend the Table.

Table to be submitted to superior Revenue-authority.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue-authority empowered by rule made by the Local Government to confirm the Table and Rent Rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

Proceedings of confirming authority.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow, in whole or in part, any objection forwarded therewith or subsequently made, or may return the case for further inquiry.

Effect of Table.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class for each class of land are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Application of Table of Rates.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents, and prepare the Settlement Rent Roll on the basis of the rates shown in the Table, by calculating the rental of each tenure or each

holding of a *raiyat* or under-*raiyat* on the area of such tenure or holding at the said rates:

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Tables of Rates.

The *idea* of Tables of Rates is not new in Bengal. (*See* sections 31A, 31B, *ante*, pp. 198, 200.) Bengal Act VIII. of 1879 provided for the preparation of them, as did the earlier forms of the Bill which resulted in the Bengal Tenancy Act, 1885. The Tables which it was then proposed to prepare were to be based on prevailing rates modified in accordance with changes in the value of the produce since those rates began to prevail; they were to have no effect of their own force, but could be appealed to by a landlord as a ground for enhancement. They were abandoned mainly because, in the greater part of Bengal, it was found that no rates prevailed such as might form their basis, and because they would still leave the classification of land and the application of the rates to be decided by the Civil Courts. Under the preceding sections, the Revenue-officer is not bound to make prevailing rates the basis of his Table of Rates, but is to be guided by such rules as the Local Government may make regarding the preparation of Tables of Rates (*see* section 104D, above), and in basing fair rents on the Tables he is to have regard, so far as may be, to the general principles laid down in the Act regarding the enhancement or reduction of rents,

Table of Rates not to be applied mechanically.

When the Revenue-officer has framed a Table of Rates, and it has been duly confirmed by the Revenue-authority empowered to confirm it, he is not mechanically to apply the rates shown in the Table in settling the rent of each particular holding. What he has to do is, taking the rates as guides, to fix a fair and equitable rent for each holding, in view of all the circumstances. There is nothing in this Part of Chapter X. to prevent a Revenue officer, in settling the rent of any particular holding, from reducing the rent by the application of his Table of Rates; but a Civil Court cannot reduce the rent of a holding on the ground that the rate paid is above the prevailing rates (*see* section 38, *ante*, page 210).

Rules made by the Local Government relating to Tables of Rates and Settlement Rent Rolls.

The rules made by the Local Government as to the preparation of Tables of Rates and Settlement Rent Rolls are Rules 64 to 77 of Chapter VI. of the Government Rules, printed in Appendix V. to this work, *post*.

It is to be observed that, under Rule 66 of those Rules, Revenue-officers are not ordinarily to prepare Tables of Rates when it is found that tenants of the local area hold their lands at lump rentals, and no rates actually exist, or when the rates are so numerous and varied, and are so little dependent on the class of soil, that no table of existing rates can be prepared; also that, when the Revenue-officer has decided to settle rents in any local area on the basis of a Table of Rates, he has first to prepare a table of existing rates, and then either to maintain the existing rates, or proceed to enhance or reduce them, having regard to the general principles laid down in the Act for the enhancement or reduction of rents, and especially to section 30, clauses (*b*), (*c*), and (*d*), *ante*, page 181.

Preliminary publication and amendment of Settlement Rent Roll.

104E. (*1*) When a Settlement Rent Roll for a local area, estate, tenure, or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner, and for the prescribed period, and shall receive and consider any objections

made to any entry therein or omission therefrom during the period of publication, and shall dispose of such objections according to such rules as the Local Government may prescribe.

(2) The Revenue-officer may, of his own motion, or on the application of any party aggrieved, at any time before a Settlement Rent Roll is submitted to the confirming authority under section 104F, revise any rent entered therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of Settlement Rent Roll and incorporation of the same in the record-of-rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent Roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent Roll, with or without amendment, or may return it for revision:

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent Roll, and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to, and revision by, superior Revenue-authorities.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E; and such appeal shall lie to such superior Revenue-authority as the Local Government may by rule prescribe.

(2) The Board of Revenue may in any case under this Part, on application, or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Board of Revenue may order revision if application is made within two years of the final publication of the record.

The Legal Remembrancer has advised that section 104G (2) must be so construed as to give the Board the power of revision in a case where an application has been made by the party within two years from the date of the certificate of final publication. This view is based on judicial rulings, which have affirmed that parties should not suffer where a procedure to which they are entitled to have recourse in a suit becomes technically barred by limitation through no fault of theirs, but by an act or omission of the Court. (Board's Circular No. 3—November, 1906.)

Jurisdiction of Civil Courts in matters relating to rent.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent Roll prepared under sections 104A to 104F, and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would

have jurisdiction to entertain a suit for the possession of the land to which the entry relates, or in respect of which the omission was made.

(*2*) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue-authority under section 104G, then within six months from the date of the disposal of such appeal.

(*3*) Such suit may be instituted on any of the following grounds, and on no others, namely—

(*a*) that the land is not liable to the payment of rent;

(*b*) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(*c*) that the relation of landlord and tenant does not exist;

(*d*) that land has been wrongly recorded as part of a particular estate or tenancy: or wrongly omitted from the lands of an estate or tenancy;

(*e*) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(*f*) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (*a*), or has wrongly fixed the date from which it is to take effect under that clause;

In E. B. Assam only.

(*g*) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;

In Bengal only.

Bengal Act I. 1907.

(*g*) that the special conditions and incidents of the tenancy, [or any right of way or other easement attaching to the land which is the subject of the tenancy, have not or has not been recorded, or have or has] been wrongly recorded;

E. B. Assam Act I., 1908 only.

[(*h*) that any right of way or easement over or appurtenant to the land has not been recorded or has been wrongly recorded.]

The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government is landlord or tenant of the land to which the aforesaid entry relates, or in respect of which the aforesaid omission was made.

(*4*) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (*a*) or case (*c*) mentioned in sub-section (*3*), declare that no rent is payable, and shall, in any other case, settle a fair rent;

and, in any case referred to in clause (*f*) or clause (*g*) of the said sub-section (*3*), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent Roll as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

Presumptions as to rents settled under sections 104A to 104G.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F, and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled, and to be fair and equitable rents within the meaning of this Act.

Distinction made between objections and disputes under the old Chapter X, and in Part III. of this amended Chapter, not applicable in proceedings under this Part (II).

The distinction made between objections and disputes in the old Chapter X., and in proceedings under Part III., does not now apply in proceedings under this Part. Objections, which may be made on unstamped paper, to any entry in the draft record or any omission therefrom, are, in the first instance, received and considered, and summarily disposed of, by the Revenue-officer under section 103A. Objections to any entry in or omission from the Settlement Rent Roll, which is prepared subsequently to the publication of the draft record, are received and considered, and summarily disposed of, by the Revenue-officer under section 104E.

Appeals to the Revenue-authorities under Part II.

An appeal lies to the superior Revenue-authorities from every order passed by the Revenue-officer under section 104B (*3*) on objections to an entry in a Table of Rates, and from orders passed by a Revenue-officer on an objection to an entry in or omission from the Settlement Rent Roll. When the record is finally published, all entries in it are presumed to be correct till the contrary is shown. The parties can thus obtain a summary decision from the Revenue-authorities on any objections they may have to any entry in, or omission from, the record-of-rights.

Suits in the Civil Court under Part II.

If they wish to carry further any matter regarding which they are aggrieved, they must sue in the Civil Court. If they feel aggrieved regarding a rent settled, the suit must be instituted within six months of the date of certificate of the final publication of the record-of-rights, or, if an appeal has been presented to a Revenue-authority regarding the amount of rent shown in the Settlement Rent Roll as settled, or regarding an omission to settle rent for entry in the Settlement Rent Roll, they must sue within six months of the date of disposal of such appeal. A suit can only be instituted on some of the grounds specified in section 104H (*3*).

Proceedings when final.

An entry of rent settled, or an omission to settle rent for entry in a Settlement Rent Roll, becomes final if not appealed against within the prescribed period of six months, while other

entries are only presumed to be correct, and the presumption may be rebutted by suit at any time after the final publication of the record-of-rights (*see* section 111A, *post*). A person dissatisfied with an entry in, or omission from, a record-of-rights prepared under this Part, which concerns a right of which he is in possession, may also institute a suit for a declaration of his right under Chapter VI. of the Specific Relief Act (I. of 1877)—*see* the proviso to section 111A, *post*.

Government Rules.

The Government Rules for procedure in settling rents under the preceding sections in this Part are Rules 64 to 77 of Chapter VI. of the Government Rules in Appendix V. to this work, *post*. *See* also, on this subject, Chapter VI. of Part II. of the Bengal Settlement Manual, 1908, pages 110 to 120.

Part III.—Settlement of Rents and Decision of Disputes in Cases where a Settlement of Land-revenue is not being, or is not about to be, made.

Part III.

In this Part, the procedure is prescribed for decision of disputes and settlement of rents where an order for a survey and record-of-rights has been made of any local area, estate, or tenure, of which a settlement of land-revenue is not being made, or about to be made. The judicial method and principles for deciding disputes and settling rents prescribed in the old Chapter X. are substantially retained in this Part. Such changes as have been made by Bengal Act III. of 1898 were introduced with a view to clear up doubtful points of procedure which had arisen in the course of experience of the working of the old Chapter.

The main difference in the procedure under the two Parts is, that, under Part III., fair rents are settled only on applications made to the Revenue-officer, and only *after* final publication of the Record under section 103A (*2*), page 454, *ante*. Under Part II., the Settlement Rent Roll prepared and confirmed as laid down

Part III.—*ctd.* is incorporated in the draft record *prior* to final publication. *See* sections 104F (*3*), page 475, *ante*, and 103A (*2*), page 454, *ante*.

The provisions of this Part ordinarily apply only to permanently-settled estates, of which a survey and record-of-rights has been ordered under section 101 or section 103. They may, however, be applied in temporarily-settled estates also should a survey and record-of-rights of them be ordered under clause (*a*), (*b*), or (*c*) of section 101, but not if a survey and record-of-rights were ordered with a view to the settlement of land-revenue under clause (*d*) of that section: in which case the provisions of Part II. apply (sections 104 to 104J, pages 467 to 479, *ante*).

Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being, or is not about to be, made.

105. (*1*) When, in any case in which a settlement of land-revenue is not being made, or is not about to be made, either the landlord or the tenant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (*2*), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(*2*) When, in any case in which a settlement of land-revenue is not being made, or is not about to be made, the Revenue-officer has recorded, in pursuance of clause (*j*) of section 102, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within two months from the date of the certificate of the final publication of the record-of-rights

under section 103A, sub-section (*2*), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(*3*) Every application under sub-section (*1*) or sub-section (*2*) shall, notwithstanding anything contained in the Court Fees Act, 1870, bear such stamp as the Government of India may, from time to time, prescribe by notification in the *Gazette of India*. Act VII, 1870.

(*4*) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(*5*) The Revenue-officer may, in any case under this section, propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(*6*) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable; and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (*4*) and (*5*).

E. B. Assam Act I., 1908, only.

[(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.]

Section 105 (1).

The words—"within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2)"—in section 105 (1) are new. Under the old section 104, which corresponded with the present section 105, the Revenue-officer was bound to settle fair rents when either the landlord or the tenant applied for a settlement of rent. Such application had, under the rules made by the Local Government, to be made before the publication of the draft record under section 105 of the old Chapter X. But, as the publication of the draft record was in many cases the first intimation to the parties of what rents were proposed to be recorded as the rents payable at the time the record was being prepared, it was thought unreasonable to call upon them to decide whether they would ask for a settlement of rent until the record had been finally published. Moreover, until objections were disposed of, the Revenue-officer might not know the exact area of the holding for which rent had to be settled. Hence the present section provides that the landlords or tenants may apply for settlement of fair rents at any time within two months of the date of the certificate of the final publication of the record. If such application is made, the Revenue-officer is bound to settle a fair rent; in doing so, he must adopt, subject to rules made by the Local Government, the procedure for the trial of suits (*see* section 107, *post*); and his decision becomes part of the record-of-rights [section 107 (2), *post*]; has the force and effect of a decree of a Civil Court in a suit between the parties; and, subject to revision by himself or another Revenue-officer under section 108, and to appeal to

the Special Judge under section 109A, is final. The existing rent may of course be settled as a 'fair rent.'[1]

Applications by joint landlords.

This section is governed by section 188, *post*. Joint landlords must act collectively, or by a common agent.

Procedure where landlord or tenant does not make an application under section 105.

When the landlord or tenant does not apply for settlement of rents under this section, the existing rents are shown in the record-of-rights, and they are presumed, till the contrary is proved, to be the rents payable, and also to be the fair rents (*see* section 27, *ante*, page 173); but it is open to the landlord or tenants concerned, after the expiration of three months from the final publication of the record-of-rights, to rebut these presumptions by applying under section 158, *post*, to the Civil Court for determination of the incidents of the tenancy or the amount of the rent payable, or by instituting a suit in the Civil Court for the enhancement or reduction of the rent, as the case may be.

Explanation to section 105 (1).

For the reason for the insertion of the *Explanation* to section 105 (*1*), *see* note to section 101, *Explanation 2*, *ante*, page 439.

Section 105 (2).

Clause (*j*) of section 102 (page 442, *ante*) which is referred to in section 105 (*2*), was added by Bengal Act III. of 1898 in order to make it clear that, when land is claimed to be held rent-free, the Revenue-officer has authority to ascertain and record whether the land is really rent-free or not.[2] If he finds that the occupant is not entitled to hold the land rent-free, he is bound, under section 105 (*2*), on the application of the landlord or the tenant. to settle a fair rent for it.

The entry made in the record-of-rights under section 102, clause (*j*), is a summary one; but, if the occupant disputes its correctness, he can institute a suit, under section 106, to contest the correctness of the entry, and can obtain a decision as to

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[1] *Rameshar Sing* v. *Bhubaneswar Jha* [1906], I. L. R., 33 Cal. 837.
[2] Statement of Objects and Reasons dated 26th March 1897, para. 23.

whether he is entitled to hold the land rent-free or not; and the decision will, by virtue of section 107, *post*, have the force and effect of a decree of a Civil Court.

Section 105 (3). The stamp-duty chargeable on an application to settle fair rents is eight annas for each tenant making or joining, or joined in, the application—*see* Notification No. 322 in *Gazette of India* of 21st January 1899, Part I., page 31.[1]

Section 105 (4). Under sub-section (*4*), the Revenue-officer is bound to presume that the existing rent is fair and equitable for all classes of tenants; and, in settling rents, is to have regard to the rules laid down in this Act for the guidance of the Civil Courts in increasing or reducing rents. In settling rents under Part II., *ante*, he is given a freer hand. It has been held[2] that, where a tenure-holder realizes a considerably higher rent from his under-tenants than he pays to the superior landlord, a claim for enhancement under section 7 of this Act, read with section 105, could *primâ facie* be maintained.

Section 105 (5). As to section 105 (*5*), *see* note to section 104A, clause (*b*), *ante*, page 469.

Section 105 (6): Compromises. As to settling fair rents by compromise, the High Court remarked in one case[3] as follows:—

> It is the duty of a Revenue-officer to inquire from each of these tenants in turn, *first*, whether he had agreed to the petition (*i.e.*, the compromise) purporting to come from him. If he denied this, as the plaintiff offered no other evidence, there would be an end of his case as against that tenant; but, if the tenant admitted having made the particular petition, the Settlement Officer should then ascertain what he understood that he consented to. Some of the petitions at least are vague in regard to the foundation upon which, by comparison with the new

[1] *See* also Bengal Settlement Manual, 1908, Chapter VII., pp. 53 to 60, for full rules as to court and process fees, and as to joint disposal of these applications. Such rules are not *ultra vires*; this was held in *Upadhya Thakur* v. *Persidh Sing* [1896], I. L. R., 23 Cal 723.

[2] *Hem Chandra Chowdry* v. *Kali Prosonno Bhaduri* [1899], I. L. R., 26 Cal. 832.

[3] *Maharani Sheoruttun* v. *Shob Gond*, Unreported Appeal 2209 dated 10th September 1895, printed in the Bengal Settlement Manual, 1908, p. 132.

measurement by the Collector, the excess area is to be determined. This should form the subject of a careful inquiry, and each of the tenants should be asked what he understood and admitted to be the representation of the area of his previous holding. Upon these data, the Settlement Officer will be in a position to determine on the said measurement whether such tenant is liable to additional rent on excess lands within the terms of the petition.[1]

The above remarks were made before the amendment of the Tenancy Act by Bengal Act III. of 1898. In the amended Act, the law has been strengthened, and it has been made quite clear that, in the case of compromises purporting to be agreements to alter the existing rent on any of the other grounds mentioned in the Act, as well as on the ground of excess area, the Revenue-officer must satisfy himself as to the fairness and equity of the new rent specified therein before accepting the compromises. In all cases in which compromises are put forward, the Revenue-officer shall, after such inquiry as may be necessary to test the fairness of the rents agreed upon, record an order stating definitely whether he is or is not satisfied that the rents proposed are fair and equitable, and giving his reasons. If he is so satisfied, he should settle the rents agreed upon by the parties; if he is not, he should settle a fair rent under sub-sections (*4*) and (*5*).

The intention of the Legislature in introducing sub-section (*6*) was to make it clear beyond possibility of doubt that the Revenue-officer is not bound to accept compromises as to the amounts of fair rents, but is, on the contrary, before accepting them, bound to satisfy himself that the amount agreed upon between the parties is fair and equitable within the meaning of this Act; and that, if he is not so satisfied, he is himself to settle the fair rent in the manner provided in sub-sections (*4*) and (*5*). *See* furthermore sections 109B and 109C, *post*.

Section 105 (7) —E. B. Assam Act I., 1908.

This new sub-section (*7*) appears to be based on the decision in the case noted below;[2] no corresponding provision exists in the Bengal Act, but the principle is obviously a sound one to follow.

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[1] *Maharani Sheoru'tun* v. *Shob Gond*, Unreported Appeal 2209 dated 10th September 1895 pridted in the Bengal Settlement Manual, 1908, p. 132.

[2] *Mohant Padmalav* v. *Lacchmi Rani* [1907], 12 C. W. N, 8.

It has recently been held[1] that, prior to the Amending Acts of 1907, 1908, a proceeding under this section should have dealt exclusively with the question of fair and equitable rent, the correctness of the entries in the record-of-rights as finally published being assumed for the purpose of that proceeding. Questions as to the correctness of these entries could not properly form the subject of an enquiry under section 105.

In actual practice it was found practically impossible to avoid questions as to the correctness of the entries in the record-of-rights in disposing of applications under section 105. Hence section 105A was inserted; *see* notes on it, *post*.

When a fair rent has been settled under section 105, and remains unaltered after an appeal to the Special Judge, no second appeal lies in such cases to the High Court.[2] *See* section 109A, *post*.

Decision of questions arising during the course of settlement of rents under this Part.—Bengal Act I., 1907; E. B. Assam Act I., 1908.

[105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise—

(*a*) whether the land is, or is not, liable to the payment of rent;

(*b*) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(*c*) whether the relation of landlord and tenant exists;

(*d*) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;

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[1] *Pandab Dowari* v. *Ananda Kisun* [1910], 14 C. W. N. 897.

[2] *Ram Bisun Raut* v *Rajaram* [1906], I. L. R., 33 Cal. 832; *Rameshwar Sing* v. *Bhubaneshwar Jha* [1906], I. L. R., 33 Cal. 837.

(*e*) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(*f*) whether the special conditions and incidents of the tenancy or any right-of-way or other easement attaching to the land have not or has not been recorded, or have or has been wrongly recorded—

the Revenue-officer shall try and decide such issue, and settle the rent under section 105 accordingly:

Provided that the Revenue-officer shall not try any issue under this section which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.]

This section was inserted to meet the practical difficulties experienced by Revenue-officers disposing of cases under section 105, especially those falling under section 105 (*2*), in which issues were habitually raised that should properly have formed the subject-matter of a regular suit under section 106.[1] The effect was, that the 'onus of proof' was often shifted on to the party who accepted the existing entry in the record-of-rights as correct from the party who disputed it, and on whom the onus would lie in a suit under section 106. Also, the court-fees payable in cases under section 105 are usually much less than the '*ad-valorem*' fees payable in those under section 106.

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[1] See *Pandab Dowari* v. *Ananda Kisun* [1910], 14 C. W. N. 897, quoted under section 105, page 488, *ante*.

These new provisions should tend to diminish litigation, and to avoid the necessity of determining substantially the same issues in applications under section 105, and in disputes under section 106.

Section 111B (*3*), *post*, provides for a stay of proceedings under section 105 till the disposal of the suit under section 106 (when such a suit has been filed) raising issues that must be decided prior to the determination of a fair rent under section 105. *See* also the second proviso to section 106 (*1*), next following, and section 107 (*2*), *post*.

Institution of suit before a Revenue-officer.

106. (*1*) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (*2*) of section 103A of this Act by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlord and tenant, or between landlords of the same or neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter; and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

Ben. Act I., 1907; E. B. Assam Act I, 1908.

[Provided also that, in any suit under this section, the Revenue-officer shall not try any issue which has

been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.]

[(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.] E. B. Assam Act I. 1908 (only).

The present section 106 above [numbered 106 (1) by E. B. Assam Act I. of 1908 only] was substituted by Bengal Act I. of 1903 for the section 106 which was enacted by Bengal Act III. of 1898, section 7; and the second proviso thereto was added by Bengal Act I. of 1907 and by E. B. Assam Act I. of 1908 [the sub-section (2) being added by E. B. Assam Act I. of 1908 only—*vide* section 105 (7), page 484, *ante*, and note thereon, *ante*, page 487].

The section reproduces and amplifies section 106 of the old Chapter X., which ran thus:—

Former law.

If, at any time before the final publication of the record under the last-foregoing section (*i.e.*, section 105 of the old Chapter), a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this Chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Section 107 of the old Chapter provided that, in all proceedings under section 106, the Revenue-officer should, subject to rules made by the Local Government under the Act, adopt the procedure laid down in the Code of Civil Procedure for the trial Act V of 1908.

of suits, and that his decision in every such proceeding should have the force of a decree.

The intention of the framers of Act VIII. of 1885 was, that the Revenue-officers should hear and decide all disputes that might come before them in connection with any entry which they proposed to make in the record or any omission made therefrom.

The High Court, however, ruled[1] that, when a dispute arose as to whether certain lands formed part of an estate or local area notified for survey and record-of-rights, the Revenue-officer had no jurisdiction to hear and decide the dispute, but should omit the land in dispute from the record altogether: also that, when two tenants disputed as to which of them should be recorded as tenant of particular lands, the Revenu e-officer had no jurisdiction to decide the dispute;[2] and again, when a dispute arose as to whether land claimed rent-free was properly held rent-free or not, it was doubted whether the Revenue-officer had any jurisdiction to decide the dispute if the relation of landlord and tenant had not existed between the parties.[3]

Object of the amendment.

The section, as it now stands, is intended to make it quite clear that the Revenue-officer has jurisdiction to hear and decide disputes on these or any other matters arising from any entry which has been made in, or any omission from, the record, if a suit is instituted before him, by plaint on stamped paper, for the decision of the dispute, within three months of the date of certificate of final publication of the record. Under section 107 of the new Chapter X., the decision of the Revenue-officer has the force and effect of a decree of a Civil Court in a suit between the parties. It was held that failure to proceed under sections 106 and 108 would bar the institution of a regular suit arising

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[1] *Norendro Nath Roy Chowdhry* v. *Srinath Sandel* [1891]. I. L. R., 19 Cal. 641; *Bidhumukhi Debi* v. *Bhugwan Chunder Rai* [1891], I. L. R., 19 Cal. 643.

[2] *Pandit Sardar* v. *Meajan Mirdha* [1893], I L. R., 21 Cal. 378.

[3] *Secretary of State for India* v. *Nitye Singh* [1893], I. L. R., 21 Cal. 38; *Karmi Khan* v. *Brojo Nath Das* [1894], I L. R., 22 Cal. 244.

out of the same point at issue,[1] but this view has since been expressly dissented from,[2] though that decision[1] still holds good to this extent, that it is only by proceeding under this Chapter that parties can compel the Settlement Officer to alter the entries in the record-of-rights as finally published. *Vide* sections 107 (*2*) and 109 (*1*), *post.*

When decision of Revenue-officer does not operate as *res judicata.*

In another case,[3] the High Court has held that, where there is a total denial of the relation of landlord and tenant, the decision of a Revenue-officer in a proceeding under section 106, although it may have the force of a decree, cannot operate as *res judicata* in a subsequent suit for ejectment, and for declaration of title, brought in a Civil Court.

Rights-of-way.

It was formerly held that a dispute as to a right-of-way between two neighbouring tenants is of a civil nature, and that the existence of a right-of-way is not one of the conditions or incidents of a tenancy, and that, consequently, a Settlement Officer had no jurisdiction to direct an entry to be made in respect of an alleged right-of-way in the record-of-rights. When such an order was made, and was affirmed by the Special Judge, the High Court, in second appeal, directed[4] all entries regarding the existence of the right-of-way in question to be expunged from the record-of-rights. This ruling has been set aside by section 102 (*i*), *ante* (page 442).

It was recently held[5] that the purchaser of a non-transferable holding is a trespasser; that, as such, he cannot claim to have his name entered in a record-of-rights, and that, in deciding

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[1] *Jogendro Nath Roy* v. *Krishna Pramada Dasi* [1908], I. L. R., 35 Cal. 1013. *See* also *Bhandi Sing* v. *Ramadhin Rai* [1905], 2 C. L. J. 359.

[2] *Gulab Misir* v. *Kumar Kalanund Singh* [1910], 14 C. W. N. 884, and *Pandab Dowari* v. *Ananda Kisun* [1910], 14 C. W. N. 897.

[3] *Dharani Kanta Lahiri* v. *Gaber Ali Khan* [1902], I. L. R., 30 Cal. 339: S. C., 7 C. W. N. 33.

[4] *Haro Mohun Ray Churamoni* v. *Pran Nath Mitter* [1899], I. L. R., 27 Cal. 364.

[5] *Umedulla Sardar* v. *Ram Chandra Bhaduri* [1910], 14 C. W. N. 812.

a dispute under section 106, the Revenue Officer acted properly in adding a note that the purchaser was a trespasser on certain lands.

Distinction between "objections" and "disputes."

The distinction made between objections and disputes in the old Chapter X. still holds good in proceedings under Part III. of the new Chapter, but the distinction is now made clearer.

Objections may be made under section 103A (page 454, *ante*), within a certain time *after* publication of the draft record, and *before* the final publication of the record. They are summarily disposed of. Disputes can only be raised *after* final publication of the record, and are heard and decided as civil suits.

Entries made in the record, where a settlement of land-revenue is *not being* made, or *about to be* made, and regarding which no objections have been made, and entries made after disposal of objections to them, are presumed to be correct till the contrary is proved (*see* section 103B, *ante*, page 455); but, when an entry has been disputed under section 106, a note of the decision has to be made in the record-of-rights as finally published—*see* section 107 (*2*), *post*: and the decision has the force and effect of a decree, and, subject to revision under section 108, and to appeal under section 109A, is final (*see* section 107, *post*).

If the decision is inconsistent with any previous entry in the record-of-rights as finally published, the decision sets the former entry aside, and becomes part of the record [section 107 (*2*), *post*].

Proceedings for decision of disputes under section 106 are suits.

It was doubted whether proceedings for the decision of disputes under section 106 of the old Chapter X. were suits. It was intended by the modification introduced by the section as it now stands to make it clear that they are suits, and it has been held by the High Court, since the modification of this Chapter in 1898, that they are suits.

Proviso to section 106.

The first proviso to section 106 enables the Revenue-officer, subject to any rules made by the Local Government, to transfer any particular case or class of cases to a competent Civil Court for trial, and was intended to provide for cases of a complicated character involving intricate questions of right or title which the Civil Courts would be more competent than the Revenue-officer to try. No rules have been made by the Local Government on the subject of transfer of cases under this proviso.

Orders of Revenue-officers on objections not *res judicata*.

It has been ruled[1] by the High Court that, when a Revenue-officer disposes of an "objection" summarily under section 103A of the amended Chapter (section 105 of the old Chapter) without adopting the procedure laid down in the Code of Civil Procedure (Act V. of 1908) for the trial of suits, his order has not the effect of *res judicata*, and is not open to appeal to the Special Judge, or to second appeal to the High Court.

Decisions of Revenue-officers in disputes are *res judicata*.

But an order disposing of a "dispute" heard and decided under section 106 under the procedure laid down in the Code of Civil Procedure (Act V. of 1908) for the trial of suits has the effect of a decree in a suit between the parties, is *res judicata*, and, subject to appeal to the Special Judge, and to second appeal, is final.[2] A decision under section 106 declaring what is the rent payable is not a 'decision settling a rent' within the meaning of section 109A, *post*, and therefore a second appeal lies[3] to the High Court against the decision of a Special Judge disposing of an appeal from a decision under section 106.

Apparently section 188 does not govern the case of one of several joint landlords instituting a dispute under section 106, as this is not 'anything which a landlord is under this Act authorized or required to do.'[4]

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[1] *Kurban Ali* v. *Jafar Ali* [1901], I. L. R., 28 Cal. 471.

[2] *Karban Ali* v. *Sheikh Jafar Ali* [1901], 5 C. W. N. 798; *Durga Charn Law* v. *Hateen Mandal* [1902], I. L. R., 29 Cal. 252.

[3] *Ramani Pershad* v. *Mahanth Adaitya Gosain* [1904], I. L. R., 31 Cal. 380. *See* notes on s 109A, *post*.

[4] *Sher Bahadur Saha* v *Mackenzie* [1903], 7 C. W. N. 400.

Compromises in suits under section 106.

Section 109B (*post*) has imposed on Revenue-officers engaged in disposing of disputes under this Chapter the duty of scrutinizing compromises put in by parties to the suits, and of rejecting them if they do not comply with the conditions laid down in that section.

In a suit under section 106, certain lands were alleged to have been erroneously recorded as part of *mauza* P, and not of plaintiff's *mauza* R, from the record of which these lands were omitted. The suit was filed more than two months after the final publication of the record of *mauza* R, but within two months of that of *mauza* P. The suit was held[1] not to be time, barred.

Note.—(1) *See* section 105 (*7*), page 484, *ante*, and notes to it, on page 487, *ante*.

(2) The period of limitation prescribed by section 106 is now *three* months, not *two* months, as now in section 105, and as in section 106 also, prior to Act III. of 1898.

In the same case it was held[1] that the Court (Revenue or Civil) dealing with the suit is confined to the question of possession and cannot be asked to adjudicate on that of title. The executors of the deceased proprietor, when substituted as defendants, were not new defendants within the meaning of section 22, Limitation Act.

In matters of procedure, an Amending Act would affect legal proceedings instituted under the repealed provision.[2] Hence a Revenue Officer could validly transfer under the first proviso to this section cases to the Civil Court, though the proviso was added to the law after the cases had been instituted before the Revenue Officer under the old law.

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[1] *Padmalav Ramananda Das* v. *Lakhmi Rani* [1907], 12 C. W. N. 8.
[2] *Rahimudin* v *Jagal Kishore* [1908], 12 C. W. N. 987.

107. (*1*) [In all proceedings under section 105, section 105A, and section 106,] the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 109A, shall be final.

Procedure to be adopted by Revenue-officer—Ben. Act I, 1907; E. B. Assam Act I, 1908. Act V. of 1908.

[(*2*) A note of all rents settled under section 105, and of all decisions of issues or disputes under section 105A or section 106, and of all rents commuted under section 40 by a Revenue-officer appointed by the designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under sub-section (*2*) of section 103A, and such note shall be considered as part of the record.]

Ben. Act I., 1907; E. B. Assam Act I., 1908.

Section 109 (*post*) supplements this section. It should be referred to.

Reference.

The object of the modifications introduced by the Acts of 1907, 1908, in this section as marginally noted, is obvious.

Amendments in this section.

The High Court ruled[1] that a decision by a Revenue-officer (under the old section 107), as to which of two persons claiming to be the tenant ought to be recorded as such, did not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land: Consequently, the section was amended to make it clear that decisions of a Revenue-officer on disputes, when a suit has been instituted before him under section 106, have the force and effect of a decree of a Civil Court

Ruling under the old section 107.

Object of the amendment.

[1] *Pandit Sardar* v. *Meajan Mirdha* [1893], I. L. R., 21 Cal. 378.

in a suit between the parties, and that his decisions, subject to revision under section 108, and to appeal to the Special Judge under section 109A, are final. When an application is made for settlement of rents under section 105 (*1*) or (*2*), and a fair rent is settled by the Revenue-officer, his decision as to the amount of the fair rent is also final, subject to revision or appeal under section 108 or 109A, *post*.

Subsequent rulings.

It has been ruled[1] by the High Court, since the Amending Act (Bengal Act III. of 1898) was passed, that, where a dispute arose, during the preparation of a record-of-rights, as to the amount of the rent payable in respect of a holding, and the Revenue-officer decided the dispute, and his decision was not set aside by appeal or otherwise, his decision had the force and effect of a decree, and was final, and could not be questioned in a Civil Court.

In another case,[2] the facts were, that, in some settlement-proceedings, *A* and *B* were arrayed against each other as plaintiff and defendant; the Settlement Officer took evidence and decided the question of *B's* rent in May 1891; *A's* estate being under the management of the Court of Wards, a certificate for realisation of arrears of rent due from *B* was issued in 1895-96; his objection to the certificate was disallowed in January 1897; and, in July 1897, he instituted a suit for the cancellation or modification of the certificate: it was *held* that the Settlement Officer's decision had the force and effect of a decree, and that, although it might not make the question of *B's* rent *res judicata*, it was admissible in evidence as to his rent.

In a recent case[3] it has been definitely ruled by the High Court that the decision of a Settlement Officer fixing a fair rent

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[1] *Ram Autar Singh* v. *Sanoman Singh* [1899], I. L. R., 27 Cal. 167 (following *Joypal Dhobi* v. *Palukdhari Dass* [1898], 2 C. W. N. 491).

[2] *Ashutosh Nath Roy* v *Abdool* [1901], I. L. R., 28 Cal. 676.

[3] *Durga Charn Law* v. *Hateen Mandal* [1901], I L. R., 29 Cal. 252. It has also been held that such a decision as to the amount of rent is admissible as evidence in a subsequent suit for rent, though it may not operate as *res judicata*: see *Mohim Chandra Roy* v. *Kalitara Debya* [1907], 11 C. W. N. 1028, and also the case *inter partes* at 11 C. W. N 939

on application made under section 104 (*2*)[1] amounts, in accordance with the provisions of section 107, to a decree, and that the matters determined by his decision, whether as to the status of a tenant, or as to the amount of a fair rent fixed, can only be re-opened on appeal to the Special Judge; also that, if no appeal is preferred, the decision becomes final, and cannot be re-opened in a suit in the Civil Court, and is *res judicata*. *See* also section 109, *post*.

Subsequent rulings— *(contd.)*.

Where the plaintiff initiated proceedings under section 106 against the landlord and certain defendants Nos. 2 and 9 (who claimed to be rival tenants of the land), to have their names recorded as tenants in the settlement-proceedings, the Settlement Officer held that the plaintiffs were the tenants, and made an order in their favour. On appeal by the defendants Nos. 2 and 9, and not by the landlord, the Special Judge reversed the decision, and ordered that the names of the defendants Nos. 2 and 9, who were the tenants, be registered. The plaintiffs thereupon brought a suit to have their rights declared as tenants, and it was held[2] that, the previous decision of the Special Judge not having been a decision between the parties to the suit, *i.e.*, the tenants on the one hand and the landlord on the other, it could not operate as a *res judicata*. The decision, it was said, should be taken to be limited between the plaintiff and the defendants Nos. 2 and 9, the tenant-defendants.

It has been held[3] that an order of a Special Judge as to the length of the standard of measurement to be used in measuring lands is not a decision under section 106, and that no second appeal lies from it to the High Court. In the case referred to, the Special Judge held, and the High Court agreed, that no appeal lay to him from the order of the Settlement Officer as to the length of the standard of measurement. The Settlement

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[1] *I. e.*, s. 104 (*2*) of the old Act (prior to 1898): at present s. 105 (*2*).

[2] *Mohunt Jaggunath Ramanuj Das* v. *Chandra Kumar Bose* [1900], 5 C. W. N. 421.

[3] *Narohari Jana* v. *Hari Charan Paramanick* [1899], I. L. R., 26 Cal. 556.

Subsequent rulings—(*concld.*).

Officer, at the time when his order as to the length of the standard was passed, had done nothing but settle the length of the measure which he was about to use in the measurement. He had not measured the lands, ascertained the area of the tenants' holdings, or recorded or settled rents. No entry or proposed entry in the record was affected by his order, and therefore it was held that there was no appeal to the Special Judge from it, or from him to the High Court. But, if the rent were regulated by a rate per *bigha*, and the number of *bighas* was entered, as it sometimes is, in the record-of-rights, obviously an appeal would lie to the Special Judge on the question of the accuracy of the entry in the record-of-rights showing the number of *bighas* held by the tenant, and this might involve the determination of the correctness of the standard of measurement adopted by the Settlement Officer.

As to *res judicata*, *see* also notes to section 103, *ante*, page 452.

Government Rules.

The rules relating to procedure, made by the Local Government under this section, are Rules 82 to 88, in Chapter VI. in Appendix V. to this work, *post*.

Under Rule 85, any number of tenants occupying land under the same landlord, in the same village, may, with the consent of the Revenue-officer, make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord; but, if, at any time, it should appear to the Revenue-officer that the question between any two of the parties so joined with others cannot conveniently be so jointly tried, he may order a separate trial of that question. By Rule 87 it is declared that it is not necessary for the Revenue-officer to draw up a separate decree with regard to the fair rent settled in each case.

Section 107 (2).

A note of all rents settled under section 105 and of all decisions of issues or disputes under section 105A or 106 is, under sub-section (*2*) of section 107, to be made in the record-

of-rights finally published under section 103A (*2*). Entries previously made in the record are presumed to be correct (*see* section 103B, *ante*, page 455); but the notes subsequently made, of rents settled and of decisions of disputes under sub-section (*2*) of section 107, become part of the record, and are final, subject to the provisions of sections 108 and 109A [*see* section 107, sub-section (*1*), page 497, *ante*, and section 109D, *post*, also].

Issue of commissions.

Commissions for local enquiries in the course of proceedings for the settlement of rents shall be issued, when required, to such person not below the rank of Sub-Deputy Collector or Revenue-officer invested with powers under Chapter X. of this Act as the officer directing the commission to issue shall appoint.[1] This does not prevent the officer who is trying the suits from making local enquiries himself.

Revision by Revenue-officer.

108. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, [section 105A,] section 106, or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 109A:

Ben. Act I., 1907; E. B. Assam Act I. 1908.

Provided that no such order or decision shall be so revised if an appeal from it is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Correction by Revenue-officer of mistakes in record-of-rights.—Ben. Act I., 1907; E. B. Assam Act I., 1908.

[108A. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from

[1] Govt. Notification of Nov. 28, 1895.—See *Calcutta Gazette*, December 4, 1895, p. 1146.

the date of the certificate of the final publication of the record-of-rights under sub-section (*2*) of section 103A, correct any entry in such record of-rights, which he is satisfied has been made owing to a *bonâ-fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.]

Object of sections 108 and 108A.

The power of revising their orders or decisions was not specifically given to Revenue-officers under Chapter X. as originally passed, and it was held to be doubtful whether any such power was inherent in them. As it came to light that some decisions, settling fair rents, which had not been appealed against, were obviously wrong, power was specifically given by section 108, in 1898, to Revenue-officers to revise their orders or decisions on disputes and their decisions as to settlement of rents; but such revision is not to affect an order passed by the Special Judge on appeal under section 109A, or any order or decision regarding which an appeal is pending before the Special Judge; and no order or decision is to be revised until reasonable notice has been given to the parties concerned to appear and be heard.

The Amending Acts of 1907, 1908, inserted section 108A, which extends the powers given by section 108 to entries which have not been made the subject of applications under section 105 or 106.

The reference to 'section 105A' was inserted in section 108 as a necessary addition consequent on the insertion of section 105A in the Act.

Rulings.

The decision reported at page 176 of I. L. R., 35 Calcutta Series,[1] is of some interest. It declared that section 108 gave no

[1] *Sambhu Chandra Hazra* v. *Purna Chandra Pal* [1908], I. L. R., 35 Cal. 176.

power to the Settlement Officer to revise the entries as to *mál* lands in the record-of-rights, and declare them *lakheraj*, in the course of proceedings under section 105. Such an alteration could only be made after a suit under section 106.

Section 108A now gives him this power. Section 105A also has altered the law very considerably.

The order of the Settlement Officer in question was passed in 1903. The appeal was decided in November 1907, but, under the law, as it stood in 1903.

109. Subject to the provisions of section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made or [suit instituted or proceedings taken under section 105 to section 108 (both inclusive).]

Bar to jurisdiction of Civil Courts.

Ben. Act I., 1907; E. B. Assam Act I., 1908.

This section is intended to bar the jurisdiction of the Civil Courts, except that of the Special Judge, to entertain an application or suit for the enhancement or reduction of rents, when an application for settlement of fair rents has been made to the Revenue-officer under section 105 (*1*), whether such application is pending disposal or has been disposed of; and also to bar the jurisdiction of the Civil Courts to entertain an application or suit concerning any matter in dispute as to which a suit has been instituted before the Revenue-officer under section 106, whether such suit is pending disposal, or has been disposed of.

Object of section 109.

Under section 111, clause (*b*), *post*, a suit may not be instituted directly in the Civil Court (where a settlement of land-revenue is not being made or is not about to be made) after the making of an order under section 101 until three months after the final publication of the record-of-rights, for the alteration of the rent or determination of the status of any tenant.

If the rent was not settled under section 105, or the status of the tenant was not decided in a suit under section 106, the

entries of the rent payable and of the status of the tenant, in the record as finally published, are merely presumed to be correct (*see* section 103B, *ante*), and the presumption can be rebutted by suit in the Civil Court. But decisions as to rent and status given in cases under sections 105, 105A, and 106 operate as '*res judicatæ*,' in virtue of section 107.

Section 113.

When the rent of a tenure or holding is settled under this Chapter, it is not ordinarily liable to alteration, in the case of a tenure or occupancy-holding, for fifteen years, and, in the case of a non-occupancy holding, for five years—*see* section 113, *post*. But section 113 does not bar the jurisdiction of the Civil Court to entertain a suit for enhancement or reduction of rent of tenures or holdings on the expiration of those periods.

Rulings by High Court.

It has been held[1] by the High Court, subsequently to the passing of Bengal Act III. of 1898, that there is no legal bar to the maintenance of a suit in the Civil Court for possession and mesne-profits by ejectment of the defendants from certain plots of land in respect of which a survey and preparation of a record-of-rights has been ordered under this Chapter as amended, in which record the defendants had already been recorded as tenants, when the plaintiff's objections to such record were still pending, and the record had not been finally published. In the case referred to, the plaintiffs sued the defendants, as mere trespassers, for ejectment. The suit was not brought for the determination of the status of the tenant, and was therefore not barred under section 111, *post*; and, as the question in issue had not been the subject of an application made or suit instituted under section 105, 106, 107, or 108, it was not barred by section 109.

A suit in the Civil Court for the alteration and correction of certain entries made in the record-of-rights published under Chapter X. of the Bengal Tenancy Act is not maintainable,[2] but the remedy provided by section 106 is not the only remedy against er-

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[1] *Troylukhyanath Bose* v. *M. N MacLeod* [1900], I. L. R., 28 Cal 28.
[2] *Jogendra Nath Roy* v. *Krishna Promoda Dassi* [1908], I. L. R., 35 Cal. 1013.

roneous entries in a record-of-rights,[1] that is to say, parties may go direct to the Civil Courts instead of coming under section 106 before Revenue Courts. *See page 431, ante, at foot of the page.*

Art. 14 of Schedule I. of the Limitation Act does not apply[2] to suits under this section.

Appeals from decisions of Revenue-officers.

109A. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive).

(*2*) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108A (both inclusive); and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

New Act V. of 1908.

(*3*) Subject to the provisions of Chapter XLII.[3] of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall

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[1] *Pandab Dwari Dass* v. *Ananda Kisun* [1910], 14 C. W. N. 897 (dissenting from the ruling quoted in footnote 2, at p 504 *ante*).

[2] *Agin Bind Upadhya* v. *Mohan Bikram Sah* [1903], I. L. R., 30 Cal. 27.

[3] *Sic* the corresponding sections of the new Code (Act V. of 1908) are 100, 101, 102, in Part VII., and Order XXII. of the First Schedule.

be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102, or settled under section 105 or section 108.

Origin. This section reproduces section 108 of the old Chapter X. with some modifications.

In what cases an appeal lies The words "sections 105 to 108A (both inclusive)" were inserted in sub-section (*2*) in order to make it clear that an appeal lies to the Special Judge only from orders and decisions of Revenue-officers settling fair rents, and from their decisions of disputes under sections 105 to 108. No appeal lies to the Special Judge against an order of a Revenue-officer disposing of objections under section 103A.

Sub-section (*3*): Second appeals. The intention of sub-section (*3*) of section 109A is, that a second appeal shall lie to the High Court from the decision of the Special Judge on any dispute regarding which an appeal has been presented to him, other than a decision by him settling a fair rent. But, if the High Court alters the decision of the Special Judge on second appeal in any particular which would affect the rent of the tenure or holding, then the High Court may settle a new rent instead of sending the case back to the Special Judge or Revenue-officer for fresh settlement of a fair rent by him. For example, if, in a suit instituted before the Revenue-officer under section 106, the question at issue were whether a certain tenant was a tenure-holder or a settled *raiyat*, and the Special Judge were to decide that he was a settled *raiyat*, and were to settle his rent as such, at a certain amount, there would be no second appeal to the High Court on the question of the fairness of the amount of rent settled, but there would be a second appeal on the question whether the tenant was in reality a tenure-holder or a settled *raiyat*. If the High Court were to decide, in the case supposed, that the tenant was a tenure-holder, and not a settled *raiyat*, then, as this alteration in

the decision of the Special Judge would probably affect the amount of the fair rent settled, the High Court might, under the proviso to sub-section (*3*), settle a new rent for the tenure, and, in doing so, would be guided by the rents of other tenures of the same class comprised in the same record.

Rulings under the corresponding section 108 of the old Chapter X.

It was held,[1] under section 108 of the old Chapter X., that a second appeal did not lie against an order of the Special Judge regarding settlement of rents. The rulings referred to have been followed under section 109A of the present Chapter X.[2]

It was also held,[3] under section 108 of the old Chapter X., that a second appeal lay from the decision of a Special Judge on a question regarding the prevailing standard of measurement, the area of lands in possession of tenants, and the liability of tenants to pay rent on account of excess lands. The decision referred to holds good under the present section, provided the questions at issue were raised by suit instituted under section 106, but not if they were raised as mere objections under section 103A.

The words "a decision settling a rent" in section 109A, cl. (*3*), of the Bengal Tenancy Act, do not mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a fair and equitable rent in place of the existing rent, and the words do not include a decision determining what the existing rent is.[4]

A second appeal lies to the High Court from a decision of a Special Judge reversing or affirming the decision of a Settlement Officer, who decided, under section 106 of the Bengal Tenancy Act,

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[1] *Shewbarat Koer* v. *Nirpat Roy* [1889], I. L. R., 16 Cal. 596; *Lala Kirut Narain* v. *Palukdhari Pandey* [1889], I. L. R., 17 Cal. 326; *Achha Mian Chowdhry* v. *Durga Churn Law* [1897], I. L. R., 25 Cal. 146.

[2] *Sambhu Chandra* v. *Purna Chandra* [1908], I. L. R., 35 Cal. 176. *See* also notes to s. 108 above. *See* also *Rameshwar Sing* v. *Bhubaneshwar Jha* [1906], I. L. R., 33 Cal. 837; and *Ram Bishun* v. *Rajaram* [1906], I. L. R., 33 Cal 832.

[3] *Mathura Mohun Lahiri* v. *Umasundari Debi* [1897], I. L. R., 25 Cal. 34, referred to and followed in—

[4] *Ramani Pershad Narain Singh* v. *Mahanth Adaitya Gossain* [1904], I. L. R, 31 Cal. 380.

what was the rent payable by the plaintiff, it not being "a decision settling a rent" within the meaning of section 109A of the Bengal Tenancy Act.[1]

But, under section 109A (*3*), the High Court cannot hear appeals from orders under sections 558, 560,[2] or 562[3] of the Civil Procedure Code [Act XIV. of 1882, which having *now* been entirely repealed and replaced by Act V. of 1908, this reference to sections 558, 560, and 562 of the former Act should now be taken as made respectively to rules 19, 21, & 23 of Order XLI. of the latter Act—*see* section 158 thereof].

It was also held[4] under the old Chapter X. that, when a "dispute" arose, whether *before* or *after* the publication of the draft record, as to the correctness of any entry which the Revenue-officer had made or proposed to make, his decision of such dispute was a decision under the old section 106, and that a second appeal lay from the decision of the Special Judge to the High Court. Under the Chapter as it now stands, there can be no *decision* by a Revenue-officer *before* the final publication of the draft record, and no appeal to the Special Judge against an order passed by a Revenue-officer *before* the final publication of the record. Only summary orders on objections are passed *before* the final publication of the record, and there is no appeal to the Special Judge against such orders.

Subordination of Special Judge to High Court.

It has been ruled[5] by a Full Bench of the High Court that the Special Judge is a Court subordinate to the High Court, and that the High Court has power to interfere, under section 622 of the Code of Civil Procedure, and, by virtue of section 15

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[1] *Ramani Pershad Narain Singh* v. *Mahanth Adaitya Gossain* [1904], I. L. R., 31 Cal 380.

[2] *Mathura Nath Ray* v. *Basanta Kumar* [1908], I. L. R., 36 Cal. 510.

[3] *Mothur Chunder Mosumdar* v. *Tara Shankar Ghose* [1903], 7 C. W. N. 440.

[4] *Dengu Kasi* v. *Nobin Kissori Chaudrani* [1897], I. L. R., 24 Cal. 462.

[5] *Upadhya Thakur* v. *Persidh Singh* [1896], I. L. R., 23 Cal. 723. *See* also the notes to s. 105, *ante*. The reference should now be to section 115 of Act V. of 1908.—*See* para. 1 above.

of its Charter, with his orders even when no second appeal lies. In the same case it was held that the Local Government can make rules as to court-fees and joinder of parties under section 189 (*post*) of this Act, and that such rules are not *ultra vires* even though they seem to authorize the joint trial of several causes of action.

Failure to plead before the Special Judge in appeal that the Settlement Officer acted without jurisdiction, in virtue of section 192 of this Act, in settling a rent, debars the re-opening of the question in the Civil Court. The Special Judge's decision affirming that of the Settlement Officer is *res judicata*.[1]

Part IV.—Supplemental Provisions.

Power of Revenue-officer to give effect to agreement or compromise. —Ben Act I., 1907, only.

[109B. (*1*) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(*2*) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

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[1] *Mohim Chandra Roy* v. *Kalitara Debya* [1906], 11 C. W. N. 939

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.

A, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy-*raiyat*; this affects the rights of the tenants of *B*. The Revenue-officer must, under sub-section (3), inquire whether *B* is a tenure-holder or a *raiyat* as defined in section 5. If he finds on the evidence that *B* is a *raiyat*, he may give effect to the agreement, but shall not do so if he finds that *B* is a tenure holder.]

Power of Revenue-officer to presume that agreements or compromises are lawful.—E. B. Assam Act I., 1908, only.

[109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful; but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter, and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.]

Power of Revenue-officer to settle rents on agreement.—Ben. Act I, 1907, only.

[109C. (1) Notwithstanding anything contained in section 109B, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the

terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 113 shall apply to a rent so settled.

(*2*) A landlord or tenant may appeal to the Special Judge appointed under section 109A on the ground that the rent settled by the Revenue-officer, under sub-section (*1*), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(*3*) The Board of Revenue may, on application made or of its own motion, in proceedings undertaken, within one year from the date of the order, under sub-section (*1*), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.]

Object of these sections.

It was found by experience that, in the course of proceedings under this Chapter, unlawful petitions of compromises were frequently put in before Settlement Officers. These sections were inserted to empower the Settlement Officer to refuse to accept such petitions. For a full discussion, *see* the "Durbhanga Final Reports,"[1] page 70, para. 26, etc.

Note of decisions on record — E. B. Assam Act I, 1908, only.

[109C. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108 and section 109A, shall be made in the record-of-rights finally published under sub-section (*2*) of section 103A, and such note shall be considered as part of the record.]

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[1] [1904.] By J. W. Kerr, Esq., I. C. S, Settlement Officer of Behar.

Note of decisions on record.—Ben. Act I., 1907, only.

[109D. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108, section 109A, or sub-section (*2*) or sub-section (*3*) of section 109C, shall be made in the record-of-rights finally published under sub-section (*2*) of section 103A, and such note shall be considered as part of the record.]

Date from which settled rent takes effect.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being, or is about to be, made) the date of final publication of the Settlement Rent Roll:

Provided as follows:—

(*a*) If the land is comprised in an area, estate, or tenure in respect of which a settlement of land-revenue is being, or is about to be, made, the rent settled shall, subject to the provisions of sections 191 and 192, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;

(*b*) if the land is not comprised in an area, estate, or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

This section reproduces the old section 110 with additions and modifications. Under the old section, a rent settled under this Chapter took effect from the beginning of the agricultural year next after the final publication of the record. Where, as in Orissa, a survey and record-of-rights and settlement of rents had to be made on a great scale, it was impossible to publish all the records in one year, while it was desirable that the rents settled should take effect from the end of the year, when the current settlement expired. The difficulty was met by the passing of Bengal Act V. of 1894, the provisions of section 2 of which Act are incorporated with the present section.

Changes made by section 110.

The additions were explained in para. 26 of the Statement of the Objects and Reasons thus :—

> The justice and expediency of those provisos [*i.e.*, provisos (*a*) and (*b*)] will be manifest. When a general settlement of rents is being made in a private estate, if the existing rent of particular tenants was settled by contract legally binding on the parties, the term of which has to run for a few years, there is no reason why a fair rent should not be settled for such tenants, while the Revenue-officer is on the spot, on the application of the parties, to take effect from the expiration of the term, or from a later date fixed by the Revenue-officer.
>
> The same remark applies to settlement of rents for purposes of settlement of revenue. The existing rents having been ordinarily fixed for the period of settlement of revenue, there is no reason why they should be altered during the currency of that period, though proceedings for the preparation of a record-of-rights and the settlement of rents may have to be undertaken, for the purposes of settlement of revenue, a few years in advance of the expiration of the term of the current settlement of revenue.

Stay of proceedings in Civil Court during preparation of record-of-rights.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not—

(*a*) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and—

(*b*) where a settlement of land-revenue is not being made, or is not about to be made—until three months after the final publication of the record-of-rights,

Bengal Act I., 1907; E. B. Assam Act I., 1908.

entertain [any application made under section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies.

Object of this section.

The object of this section, which reproduces the old section 111 with some modifications, is to bar the Civil Courts from entertaining suits or applications regarding certain matters which, when an order has been passed under section 101, are or may be under inquiry by the Revenue-officer.

Clause (*a*).

Where a settlement of land-revenue is being made or about to be made, the Revenue-officer is bound to settle fair rents for tenants of all classes, and to determine summarily the status of tenants of all classes, before the final publication of the record-of-rights. It would, manifestly, be inadvisable that the Civil Courts should entertain suits or applications regarding these same matters while they are under inquiry by the Revenue-officer.

Any person aggrieved by an entry of a rent settled, or by an omission to settle rent, where a settlement of land-revenue is being made or about to be made, may, under section 104H, institute a suit in the Civil Court within six months of the date of certificate of the final publication of the record-of-rights, or, if an appeal has been preferred to a Revenue-authority under section 104G, he may institute a suit within six months of the disposal of such appeal. But, where a settlement of land-revenue is being made or about to be made, a suit regarding an entry of a rent settled or an omission to settle a fair rent can be instituted only on the grounds mentioned in section 104H. The question of the correctness of the amount of a rent settled can be raised in a

civil suit only, so far as the rent is liable to alteration in consequence of a decree obtained on any of the matters specified in that section. Suits to contest the accuracy of an entry relating solely to the status of a tenant, and not to contest the fair rent settled, may, where a settlement of land-revenue is being made, or is about to be made, be istituted in the Civil Court at any time after the final publication of the record: the six months' period of limitation prescribed in section 104H does not apply to such suits.

Clause (b).

Where a settlement of land-revenue is not being made, or is not about to be made, the landlord or tenant may apply under section 105 to the Revenue-officer for settlement of rents within two months of the final publication of the record-of-rights, and may, under section 106, within three months of such final publication, institute a suit before the Revenue-officer for the decision of a dispute relating to the status of a tenant, or to any other matter. It was deemed undesirable that landlords and tenants should have, during these periods, the option of applying to the Civil Court for the enhancement or reduction of rents or the determination of the status of tenants. If neither landlord nor tenant has applied to the Revenue-officer, within the prescribed period, for a settlement of fair rent, or if neither landlord nor tenant has instituted a suit before the Revenue-officer for decision of a dispute relating to an entry in the record-of-rights as to the status of the tenant, nothing in this section, or in this Chapter, bars them from instituting a suit in the Civil Court for the enhancement or reduction of rent, or for the determination of the status of the tenant at any time after the expiration of the three months from the final publication of the record-of-rights. What is barred by section 111 is the entertainment by a Civil Court of any suit or application for the determination of the status of a tenant (or alteration of the rent), in the area to which the record-of-rights applies, from the making of an order under section 101 until three months after the final publication of the record-of-rights.[1]

[1] *Troylokhyanath Bose* v. *M. N. MacLeod* [1900], I. L. R., 28 Cal. 34 (followed in *Gulab Misir* v. *Kumar Kalanand Singh* [1910], 14 C. W. N. 884).

Section 111 does not apply to suits other than suits for alteration of rent or determination of status of a tenant.

Obviously this section does not apply to suits for arrears of rent. If, in a suit for arrears of of rent, the amount of the existing rent demandable were disputed, nothing in the section bars the Civil Courts from deciding that question within three months of the final publication of the record-of-rights. When a tenant agreed to pay additional rent for excess land found on measurement to be in his possession, and a suit was brought for recovery of rent for such excess land, it was *held*[1] by the High Court that such a suit, being for arrears of rent, was not barred under the old section 111 as being a suit for alteration of rent, merely because, subsequent to the accrual of the rent, there had been settlement-proceedings under the Act, and land had been measured in connection therewith. The question in the case referred to, it was said, was not what the tenant would be liable to pay in future years, but what was the rent due under the terms of the contract for the year preceding the year in which the order was passed under section 101 of the old Chapter X. This decision holds good under the present section.

Addition by Acts of 1907, 1908.

The entertainment of applications under section 158 is now barred by this section for the same period. A very clever attempt was made by a landlord in a certain district to nullify the whole object of preparing records-of-rights by getting a series of *ex-parte* decisions passed on applications made under section 158 during the progress of the preparation of the records-of-rights. It is obvious that '*ex-parte*' determinations of the particulars specified in section 158 are worse than useless. The necessary alteration was made by the Amending Acts of 1907 and 1908 to nullify such sharp practice.

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing, or attestation of such a record, or of any part of it, or, save as provided in section 104H, for

[1] *Ramjan Ali* v. *Amjad Ali* [1893], I. L. R., 20 Cal. 903.

the alteration of any entry in such a record of a rent settled under sections 104A to 104F:

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (*2*), clause (*d*), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI. of the Specific Relief Act, 1877. Act I. of 1877.

Principle

The principle embodied in this section is, that the preparation of a record-of-rights is a purely executive matter over which the Courts have no control. They may, however, entertain a suit for the declaration of an alleged right which conflicts with the record framed when a settlement of land-revenue is being, or is about to be, made. Such a suit is not barred by section 106.[1]

Origin.

The first clause of the section is based on section 158 (*2*), clauses (iv.) to (vi.), of the Punjab Land-revenue Act, XVII. of 1887, and the proviso is based on section 45 of that Act.

Stay of suits in which certain issues arise.—Bengal Act I, 1907; E. B. Assam Act I, 1908.

[111B. (*1*) Where a record-of-rights has been prepared and finally published in respect of the land in an area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely—

(*a*) whether the land is or is not liable to the payment of rent;

[1] *Gulab Misir* v. *Kalanand Singh* [1910], 14 C W N 884. The nature of the remedy provided by this section was discussed in *Ramgulam Singh* v. *Bishun Progash* [1906], 14 C. W. N 48, and it was laid down that it is *not* necessary to bring a formal suit to avoid a presumption.

(*b*) whether the relation of landlord and tenant exists;

(*c*) whether the land is part of a particular estate or tenancy; or

(*d*) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.]

Bengal Act I, 1907 (*only*).

[(*2*) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (*1*) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.]

E. B. Assam Act I., 1908 (*only*).

[(*2*) If, before the publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (*1*) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106, or in proceedings under section 105A, try such issue unless, in such civil suit, such issue is not in fact tried or decided.]

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[(*3*) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (*1*) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, he is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue.

And, after the issue has been finally decided, he shall settle a fair rent as if the record-of-rights had been framed in accordance with such decision.

(*4*) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (*1*), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.]

Origin of the section.

This section was introduced into the Act by the Amending Acts of 1907, 1908: [In the E. B. Assam Act a slight variation is noticeable in sub-section (*2*) only.]

Object of the section.

Section 111 above restricts the jurisdiction of the Civil Courts only in these cases—

(*a*) as regards applications under section 158;

(*b*) as regards suits or applications for the alteration of the rent; and

(*c*) as regards suits or applications for the determination of the status of a tenant,

in the area affected by the order made under section 101, *ante*, page 436, from the making of that order till three months after final publication of the record-of-rights. No such bar of jurisdiction is entailed by the issue of an order under section 103, *ante* (page 446).

It is obvious that many issues other than those just enumerated may arise during the preparation of the record-of-rights; and the party dissatisfied with the Revenue-officer's finding thereon at any stage prior to the final publication of the record-of-rights might at once put in a suit in the Civil Court, or he might do so, after the final publication, even within the three months' time allowed under section 106 or the two months allowed under section 105, for applications to the Revenu-oefficer.

If the other party had meanwhile applied to the Revenue-officer under section 105 or 106, conflicts of decision might easily

arise which would lead to further litigation. The present section was framed to meet these practical difficulties, and to prevent the same question from being fought out in Civil and Revenue Courts at the same time. The reasons for the section are explained at length at pages 155-7 of Volume III. of the "Selections" dealing with the amending Act I. of 1907 (B. C.).

Power to authorize special settlement in special cases.

Bengal Act I., 1907 (*only*).

112. (*1*) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, [or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer] with the following powers, or either of them, namely—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

Sub-section (*1*) of the corresponding section in the E. B. Assam Act now stands as follows:—

Power to authorize special settlement in special cases

E. B. Assam Act I., 1908 (*only*).

112. (*1*) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order, or of the local welfare, [or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the

rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer] with the following powers or either of them, namely—

(*a*) power to settle all rents,

(*b*) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

Sub-sections (*2*), (*2a*), and (*3*) below are common to the Acts of both the Provinces.

(*2*) The powers given under this section may be made exerciseable within a specified area, either generally, or with reference to specified cases or classes of cases.

[(*2a*) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive)] Bengal Act I., 1907; E B Assam Act I., 1908.

(*3*) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council; [and the revision, by direction of the Board of Revenue under sub-section (*2*) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor-General in Council.] Ditto.

This section was intended to take the place of the Agrarian Disputes Act (Bengal Act VI. of 1876). Sir STEUART BAYLEY, when moving for the consideration of the Reports of the Select Origin and intention of section 112.

Committee on the Bengal Tenancy Bill, explained the intention of the section thus—

> It is an extreme power, intended to take the place of Sir R. TEMPLE's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that, in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes, and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period.[1]

The section, in its original form, was unworkable, but, by the Amending Acts of 1907, 1908, it has been made workable. *See* Rule 78 of Part VI. of the Government Rules, Appendix V., *post*. It has been only very sparingly employed, so far.

Period for which rents as settled are to remain unaltered.

113. (*1*) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement, or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy-rights, for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-*raiyat* not having occupancy-rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding, or on the ground specified in section 38, clause (*a*).

(*2*) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Sections 37 and 113 contrasted.

When the rent of an occupancy-holding has been enhanced by a Civil Court, or by contract, on the ground that the rate of rent is below the prevailing rate, or on the ground of a rise in

[1] Selections, p. 424.

prices, it cannot again be enhanced for fifteen years (*see* section 37, *ante*, page 209); but there is nothing to prevent its reduction within that period. Under section 113, however, as it now stands, when the rent of a tenure or occupancy-holding has been settled under this Chapter, it cannot be either enhanced or reduced for a period of fifteen years except on the grounds specified in the section.

Modifications made in section 113.

The modifications made in the old section 113 were explained in the Statement of Objects and Reasons (para. 27) thus:—

> Section 113 of the Act provides that a rent settled shall not be *enhanced* in, the case of an occupancy-*raiyat*, for 15 years, and, of a non-occupancy *raiyat*, for five years; but there is nothing to prevent its being *reduced* within these periods respectively. The intention was to fix rents for the periods named, and it is obvious that the considerations in favour of preventing enhancements during these periods apply with equal force to reductions of rents settled. The section has been amended so as to make it clear that reductions of the rents settled will not be permitted, during these periods, except on the ground of diminution of area or that specified in section 38 (*a*) of the Act.

Under-raiyats.

The section, as amended, makes it clear that the periods during which rents settled under this Chapter for occupancy and non-occupancy holdings are to remain unaltered, apply also in the case of under-*raiyats* having rights of occupancy and under-*raiyats* not having rights of occupancy, respectively. Compare section 40A, page 222, *ante*.

Expenses of proceedings under Chapter.

114. (*1*) When the preparation of a record of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being, or is about to be, made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure, or part thereof (including expenses that may be incurred [at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair, or restoration] of boundary-marks and other survey-

Ben Act I., 1907; E. B. Assam Act I, 1908

marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants, and occupants of land in that local area, estate, tenure, or part in such proportions, [and in such instalments (if any)], as the Local Government, having regard to all the circumstances, may determine.

Ben Act I., 1907; E B. Assam Act I., 1908.

Ditto.

[(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair, or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3)] The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure, or part.

Ditto.

[(4) The cost of preparing copies of survey-maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.]

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate, or tenure.

Modifications made in the old section 114.

The modifications made by Bengal Act III. of 1898 in the old section 114 were thus explained in the Statement of Objects and Reasons of the amending Bill:—

A somewhat important change in this section is proposed. As the section now stands, the proportion of the costs of a survey and record-of-rights, to be defrayed by each individual landlord or tenant, must be

recovered from *him* as an arrear of land-revenue under the Public Demands Recovery Act. It is practically impossible to carry out the provisions of the section as it stands. In Bihar, where there are small estates and a great number of co-sharer proprietors, the amount recoverable from each individual co-sharer is sometimes less than one anna. To issue a separate certificate against each one of the individual co-sharer landlords under such circumstances would only subject them to unnecessary expense, while endangering the realisation of the costs of the proceedings. It is therefore proposed to hold the whole estate or tenure, in case of proprietors and tenure-holders, liable for the proprietors' and tenure-holders' shares of the costs, respectively. Since doubts have been expressed as to whether the Revenue-officer has authority to record the names of holders of revenue-free or rent-free lands, unless the relationship of landlord and tenant is proved or admitted to exist, and therefore, whether the holders of such lands are, under section 114, liable for any part of the costs of a survey and record-of-rights of the local area or estate in which they may be included, it is expressly provided that such lands are tenures for the purposes of this section, and therefore liable for their share of the costs, as they are also declared to be so liable under the alternative procedure for recovery of costs contained in Part III. of Bengal Act III. of 1895.

Principles on which costs are apportioned.

This section does not oblige the Local Government to make strict rules for the apportionment, between landlords, tenants, and occupants of the local area, estate, or tenure, of the expenditure incurred on surveys and records-of-rights; but the principles on which the apportionment is usually made are described in the Bengal Settlement Manual (1908), pages 146 to 150. The modifications made by the Amending Acts, 1907, 1908, were meant to meet practical difficulties.

Another procedure.

Another procedure for recovery of costs referred to in section 114 is provided by the Land Records Maintenance Act (Bengal Act III. of 1895), sections 28 to 32 and 36 (*c*), but these sections have never been resorted to in practice.

No recoveries in certain cases

No costs are recovered when land-revenue is being settled.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Principle.

Under the provisions of this section, the presumption under section 50 (*2*) ceases to apply to any tenure or holding in respect of which the particulars mentioned in section 102, clause (*b*), have been recorded under this Chapter, that is to say, in respect of which the status of the occupant of the tenure or holding has been recorded. As the particulars mentioned in section 102, clause (*b*), have been recorded in respect of all tenancies in all areas of which a survey has been made and a record-of-rights prepared under section 101 since the passing of the present Act, it follows that the presumption under section 50 (*2*) has ceased to apply to the rents of tenancies in such areas since the record was prepared.

Areas in which the presumption under section 50 has ceased to apply.

Records-of-rights under this Chapter have been prepared for most of Bihar, Orissa, and the Chittagong district, and for many Wards' and Government Estates and many private permanently-settled estates, so that the presumption under section 50 does not apply in respect of tenancies in these areas. If, then a tenant, who has not been recorded as a tenant at a fixed rent or fixed rate of rent in the record-of-rights in these areas, should claim at any future time the right to hold at a fixed rent or fixed rate of rent, the onus is entirely on him of proving that he has held at a fixed rent or rate of rent since the date of the Permanent Settlement, or for twenty years prior to the framing of the record-of-rights.

In a recent case, however, it was *held*[1] that, even apart from the presumption of section 50 of this Act, proof of an unvaried rent for periods of 27, 60, and 57 years was enough to justify a finding that the tenants held at rents fixed in perpetuity.

From this it would appear that a claim to this status may be proved in future, in spite of the exclusion of the presumption of section 50, by this section (115).

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[1] *Gulab Misir* v. *Kalanand Singh* [1910], 14 C. W. N. 885.

It has been *held*[1] by the High Court that the provisions contained in section 115, against the presumption as to fixed rent under section 50 (*2*), do not apply in a suit for the purpose of contesting the decision of a Revenue-officer in regard to the entry as to the status of a *raiyat* in a record-of-rights prepared under Chapter X. of this Act. In such a suit the tenant is entitled to the benefit of the presumption. Section 115, it was said by the learned Judges, "seems to contemplate a case in which a *raiyat* is seeking the benefit of the presumption for a period subsequent to the time when the record-of-rights was framed." In a later case, where, after an entry in the record-of-rights that the tenant is an occupancy-*raiyat*, the landlord brought a suit for enhancement of rent, it was *held*[2] that, notwithstanding the provisions of section 115 of the Bengal Tenancy Act, the tenant was entitled, upon proof of uniform payment of rent for 20 years before the record-of-rights was framed, to the benefit of the presumption under sub-section (*2*) of section 50; and that the word "thereafter" in section 115 refers to a period subsequent to the publication of the record-of-rights.

Cases in which that presumption does not apply.

[115A. In the demarcation of village-boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village-maps of the revenue-survey, *or other survey*, if any, *adopted under clause* (*10*) (*b*) *of section 3 as defining villages*, and where village-maps prepared at such revenue *or other* survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.]

Demarcation of village-boundaries.—Bengal Act I., 1907; E. B. Assam Act I., 1908.

Act V. (B. C.), 1875

The words in italics are *not* found in Bengal Act I., 1907, but only in E. B. & Assam Act I., 1908.

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[1] *The Secretary of State* v. *Kaimuddi* [1899], I. L. R., 26 Cal. 617.
[2] *Radha Kishore Manikya* v. *Umed Ali* (No. 1258 of 1907).

It has been *held*[1] that an order, as to boundaries under section 41 of the Survey Act (V. of 1875), passed by the Survey and Settlement Authorities, is a determination by a competent Court of the rights of the parties entitled to possession of the land, within the meaning of section 146 of the Criminal Procedure Code, as such order has the force of an order of the Civil Court.

Bengal Act III. of 1898, sections 8, 9, and 11,

The following sections (8, 9, and 11) of Bengal Act III. of 1898 do not form part of Chapter X. of the present Act, but relate to it:—

Validation of publication of past records.

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form, shall be deemed to have been duly published.

Effect of settlements of rent and decisions by Revenue-officers made before the commencement of this Act.

9. (*1*) Every settlement of rent or decision of a dispute by a Revenue-officer under section 104 or section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final:

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act if the appeal be presented within thirty days from the date of such settlement or decision.

(*2*) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

Repeal of Bengal Act V of 1894.

11. Bengal Act V. of 1894 (*an Act to remove doubts which have arisen in connection with the re-settlement of land-revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, 1885*) is hereby repealed.

Section 8 of Bengal Act III. of 1898 was inserted in order to settle technical doubts which had been expressed as to the sufficiency, from a legal point of view, of the methods by which records previously prepared had been published in some cases.[2]

Section 9 was introduced in order to make it clear that a decision of a dispute or settlement of rent by a Revenue-officer,

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[1] *Ambler* v. *Sami Ahmed* [1910], I. L. R., 37 Cal 331.
[2] Statement of Objects and Reasons, para. 29.

before the passing of Bengal Act III. of 1898, was to have the force and effect of a decree in a civil suit between the parties.[1]

Section 11.—The provisions of Bengal Act V. of 1894 were incorporated in the amended Chapter X. Hence the Act was repealed.

The following rules have been laid down for the levy of court-fees in surveys and settlements[2] :— **Court-fees in surveys and settlements.**

Court-fees.

1. When a survey and record-of-rights are undertaken with a view to the settlement of land-revenue, applications or petitions to a Revenue-officer making a settlement of land-revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented before the final confirmation of the settlement under section 104F (*3*), are not chargeable with any fee [section 19 (ix.) of the Court Fees Act of 1870].

Court-fees remitted in settlements of land-revenue.

2. In the case of proceedings under Chapter X. of the Bengal Tenancy Act, when a settlement of land-revenue is not being or about to be made, a Revenue-officer is a Revenue-officer[3] within the meaning of Schedule II., clause 1 (*b*), of the Court Fees Act; and applications or petitions filed before him, unless they are exempted under the several notifications contained in Rule 3 below, must be stamped with a court-fee of eight annas :

Definition of Revenue-officer and Revenue Court.

(i) Provided that, as, when trying a suit instituted for the decision of a dispute under section 106, a Revenue-officer acts as a Civil Court, plaints in such cases shall be stamped according to the nature of the subject-matter in dispute, in accordance with Article 1 of Schedule I. or Articles 5 and 17 of Schedule II. of the Court Fees Act, and all applications and petitions made in the trial of such suits shall be stamped as required,

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[1] Statement of Objects and Reasons, para. 29. The ruling reported at p. 162 of I. L. R., 32 Calcutta (1905), was to expound the meaning of this section (s. 9 of Ben. Act III. of 1898) : "The words 'every settlement of rent or decision of a dispute by a Revenue-officer' are applicable only to those cases which a Revenue-officer has jurisdiction to try, and are not applicable to a decision of a Settlement Officer as to the validity of a *lakhiraj* title under section 104 of the Bengal Tenancy Act of 1885."—*Radha Kishore Manikya* v. *Durga Nath Bhattacharjya.*

[2] Bengal Settlement Manual, 1908, pp. 53 to 60—Pt. I., Ch. VII.

[3] *Sic. Read* Revenue Court.

in the case of applications or petitions to a Civil Court, under Schedule II. of the Act.

(ii) Provided that applications for settlement of rents under section 105, Bengal Tenancy Act, must be stamped in accordance with Rule 3 (*ii*) below.

3. In exercise of powers conferred by section 35 of the Court Fees Act (VII. of 1870), and section 105, sub-section (*3*), of the Bengal Tenancy Act, 1885, as amended by the Bengal Tenancy (Amendment) Act, 1898, the Government of India, by Notifications Nos. 321-S.R. and 322-S.R. dated the 19th January 1899, have made the following rules :—

(*i*) Fees chargeable on applications or petitions of objection referring to any entry made, or proposed to be made, in a draft record-of-rights prepared under Chapter X. of the Bengal Tenancy Act, 1885 (VIII. of 1885) :

Provided that such applications or petitions are presented before the publication of such draft record under section 103A, sub-section (*1*), of the said Act.

[*Note.*—Applications for commutation of produce-rents under section 40 of the Tenancy Act are not 'such applications,' but require a court-fee stamp of eight annas, whether presented before or after draft publication [*vide* rule 1 (*b*), page 37 : Stamp Manual.]

(*ii*) When a record-of-rights is being prepared under Chapter X. of the said Act, and an application is made under section 105 thereof for a settlement of rent, such application shall bear a stamp of eight annas for each tenant making or joining, or joined in, the application.[1]

[*Note.*—The word 'tenant' in clause (*ii*) means a tenancy which may be held by several tenants as co-sharers, and a court-fee of eight annas is payable in respect of each such tenancy included in an application for settlement of rent under this section.]

Remission of fees on certified copies prepared for distribution to the parties.

4. In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII. of 1870), the Governor-General in Council is pleased to remit the fees chargeable under the said Act on *certified* copies of entries in records-of-rights furnished, in accordance with any *rules* for the time

[1] The legality of this rule as to joinder of parties at a special fee was considered, and it was held to be duly framed, and not *ultra vires.*—*Upadhya Thakur* v. *Persidh Sing* [1896], I. L. R., 23 Cal. 723 (F. B.).

being in force under the Bengal Tenancy Act, 1885 (Act VIII. of 1885), after the final publication of such record-of-rights under section 103A (*2*) of that Act. (*Vide* India Government Notification No. 4634, Exc., dated, Simla, August 18, 1905.)

[*Note.*—The rule referred to is Rule 81 of Chapter VI. of the Government Rules under this Act. (*See* Appendix V., *post.*) Copies prepared otherwise than under this rule must bear the usual court-fee stamp.

Court-fees in appeals under sections 104G (*1*) and (*2*) and 108, 108A, Bengal Tenancy Act.

5. Appeals presented under section 104G (*1*) to a superior Revenue-authority, and applications for revision presented under sections 108 and 108A, will bear a court-fee of eight annas per tenancy, under Schedule II., 1 (*b*), of the Court Fees Act, if the superior Revenue-authority is of lower standing than a Commissioner of a Division. If the authority is a Commissioner of a Division or the Director of the Department of Land Records, or if an application for revision is made to the Board under section 104G (*2*), the fee will be one rupee, under Schedule II., 1 (*c*), of the Court Fees Act.

CHAPTER XI.

[NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND] RECORD OF PROPRIETORS' PRIVATE LANDS.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

116. Nothing in Chapter V. shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, [lands acquired under the Land Acquisition Act, 1894, for the Government, or for any Local Authority, or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government, or of any Local Authority or Railway Company, or to] a proprietor's private lands known in Bengal as *khámár*, *nij*, or *nij-jote*, and in Bihar as *zirát*, *nij*, *sír*, or *kamat*, where any such land is held under a lease for a term of years, or under a lease from year to year.

Saving as to khamar land.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

This whole chapter was extended to Cuttack, Puri, and Balasore Districts in 1906.

Extent of application.

In introducing the Bengal Tenancy Bill in Council, Sir Courtenay Ilbert explained the distinction between proprietors' private lands and *raiyati* lands and the objects of this Chapter thus:—

Principle of section 116.

We find that there are two distinctions long and deeply ingrained in the mind of the agricultural population of Bengal: The one is the distinction between the *khudkasht* and the *paikasht raiyat*..... The other is the distinction between that portion of the land which, under whatever circumstances it was acquired or appropriated, and by whatever denomination it was known, whether as *sír*, *khámár*, or *zirát*, was recognized as being in a special and exclusive sense the private property of the *zamindar*, as distinguished from all the rest of the cultivated or cultivable area, which

may be called *raiyati* land, and in respect of which the *zamindar's* rights were merely to receive a share of the produce or equivalent in money.[1]

Paragraph 18[2] of the Statement of Objects and Reasons to the Bengal Tenancy Bill, as introduced in Council, contained the following passage, descriptive of clauses 5 and 6 of the Bill, which were afterwards struck out:—

> Having regard to the efforts made by landlords in some parts of the country, under the existing law, to get into their own hands as large an amount of the *raiyati* land as possible, and convert it into *khámár* land, it has been thought necessary to make it clear by the definition that the existing stock of *khámár* land cannot hereafter be increased, and further to enact that all land which is not *khámár* land shall be deemed to be *raiyati* land, and that all land shall be presumed to be *raiyati* land till the contrary is proved.

Original meaning of terms khamar and nij-jote.

Khámár—Khámár in Hindi, in Persian *Kharmun*—probably originated in the name of a spot near the village, or in the most eligible place, where corn and other grain was brought to be threshed and winnowed. This spot was excluded from the revenue (in Muhammadan times), and probably a considerable appendage adjacent.[3]

Nij-jote, which Galloway thought ought to be *neech-jote*, is from *neech*—under, and *jote*—to plough, *i.e.*, land reserved by the *zamindar*, and excluded from the *jama*, for cultivation under himself."[4] According to other authorities, the expression is derived from *nij*, own, meaning land in the *zamindar's* own cultivation as distinguished from *raiyati* land.

Under the rules of the Decennial Settlement, "*khámár*" was understood to be lands appropriated by the *zamindars* of Bengal and Orissa to the subsistence of themselves and their families.[5] Under the Permanent Settlement (*see* Regulation

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[1] Selections, pp. 52 and 53.
[2] *Ibid*, p. 189.
[3] Galloway's *India*, p. 88.
[4] *Ibid*, p. 78.
[5] Colebrooke's Supplement, p. 315; Bengal Government Letter to the Government of India, 1906-T. R., dated 15th September 1884, para. 74, in Selections, p. 367.

VIII. of 1793, sections 37 to 39), no land was recognized as *khámár* which was not such on the 12th August 1765, the date of the grant of the *Dewani;* and there is no law recognizing the creation of *khámár* subsequent to that date.

Under the old law (section 6, Bengal Act VIII. of 1869), an occupancy-right could not be acquired in *khámár, nij-jote,* or *sír* land belonging to the proprietor, and let by him on lease for a term or year by year; and the same rule applies under the present law. If *khámár, sír,* or *nij-jote* land be let to a *raiyat,* but not for a term of years, or year by year, occupancy-rights could be acquired in it by 12 years' continuous possession[1] under the old law, and may be so acquired under the present Act also. Section 51 should, however, be borne in mind.

Acquisition of occupancy-rights.

It has been ruled[2] that, where Act VIII. of 1869 applies, lands which were *khamat* do not cease to be so by virtue of a *mukarrari* settlement of the same: a tenant of *khamat* land does not acquire a right of occupancy by 'holding over' after the expiry of his lease.

The right to hold *nij-jote* lands passed with a sale to the auction-purchaser under the old law, and the *zamindar* could not claim a right of occupancy in those lands;[3] and the same principle applies under the present Act.

This section applies even in a case in which a person is brought on the *malik's* (proprietor's) *zirát* land as a *raiyat* by a a lease for a term of years; therefore such a person cannot acquire any right of occupancy or non-occupancy on the said land; and he, being a trespasser only, is liable, on the expiry of the lease of the lessee, to ejectment.[4]

It is to be noticed that it is only proprietors who can have private land, and not *patnidars* or other tenure-holders.

Only "proprietors" can have "private land."

[1] *Gourhuree Singh* v. *Beharee Raoot* [1869], 12 W. R. 278.
[2] *Khalil ur-Rahman* v. *Rupan Mahton* [1908], 12 C. W. N. 436.
[3] *A. Reed* v. *Sree Kishen Singh* [1871], 15 W. R. 430.
[4] *Sheo Nandan Roy* v. *Ajodh Roy* [1899], I. L. R., 26 Cal. 546.

Object of the amendments of 1907 and 1908.

The object of the additions by the Amending Acts of 1907 (Bengal) and 1908 (E. B. & Assam) is to enable Government, local bodies, etc., to lease out, temporarily, lands once acquired, without incurring the risk of having to pay compensation for occupancy-rights over again.

Power for Government to order survey and record of proprietors' private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last-foregoing section.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last-foregoing sections, the provisions of [sections 103A, 103B, 106, 107, 108, 109, and 109A] shall apply.

Amendment.

The words and figures in brackets, in section 119 were substituted for the words and figures "sections 105 to 109, both inclusive," by Bengal Act III. of 1898, section 10.

Sections 117 and 118.

The Select Committee, when reporting on the Bengal Tenancy Bill, explained that they had provided two alternative methods of procedure for determining what are proprietors' private lands, namely—(*a*) that of a "survey and registration of such lands by a Revenue-officer, by order of the Local Government; and (*b*) that of inquiry on the application of the individual landlord or tenant concerned." The former method is provided for by section 117 of the Act, which is intended to apply to large

areas, and the latter by section 118, which is intended to be applied to disputes regarding particular plots.[1]

Neither method has in fact been much resorted to since the Act was passed. But, where surveys have been made, and records-of-rights prepared, under Chapter X., the record-of-rights shows, as to any particular land, whether it is a proprietor's private land or not. Section 158 could be utilized also for determining such questions.

Rules under section 118.

The rules made by the Local Government under section 118 are contained in Chapter IV. of the Government Rules in Appendix V. to this work, rules 20 to 24, *post.*

Section 119.

By section 119, the provisions of the sections in Chapter X. relating to the publication of the record (section 103A, *ante*, page 454), presumption of correctness of entries in the record (section 103B, *ante*, page 455), decision of disputes where a settlement of land-revenue is not being made or about to be made (sections 106 and 107, *ante*, pages 490 and 497, respectively), revision of the record (section 108, *ante*, page 501), barring the jurisdiction of the Civil Courts (section 109, *ante*, page 503), and appeals from decisions of the Revenue-officer to the Special Judge (section 109A, *ante*, page 505) are all made applicable to proceedings under section 117 (*ante*, page 536) or section 118 (*ante*, page 536).

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as *khámár*, *zirát*, *sír*, *nij*, *nij-jote*, or *kamat* by the proprietor himself with his own stock, or by his own servants, or by hired labour, for twelve continuous years immediately before the passing of this Act, and

[1] Selections, p. 239.

(*b*) cultivated land which is recognized by village usage as proprietor's *khámár, zirát, sír, nij, nij-jote*, or *kamat*.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[(*2a*) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land unless it is proved to be such by satisfactory evidence of the nature described in sub-section (*1*) or sub-section (*2*).]

(*3*) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers

Cultivation by leaseholder

Cultivation for 12 years continuously by a *thikadar* or *ijaradar* leaseholder immediately before the passing of this Act will not convert *raiyati* land into *zirát*.

Meaning of "zirat" in Bihar.

In Bihar, the term *zirát*[1] is used to denote all lands in direct occupation of indigo-planters for cultivation of indigo as distinguished from cultivation of indigo by *raiyats* (*assamivar*). The

[1] Correctly *siráat*.

factory may hold the land as proprietor, tenure-holder, *raiyat*, or under-*raiyat*. Whatever the interest may be, the land is still called *zirát*, but the term used in this sense has no connection with the term "*zirát*" as used in this Chapter and meaning proprietor's "private land."[1] Every year that passes makes it more difficult for proprietors to prove that lands held by them directly are true legal 'private lands.'

Sub-section (2).

In a case that came up in appeal before the High Court, the petitioners applied, under section 118, to the Collector to have certain lands recorded as their private lands, and the opposite party filed a petition of objection. The only material question in dispute was as to the kind of evidence admissible to show the land to be the private land of the petitioners. It was *held*[2] that, in enacting sub-section (*2*) of section 120, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and, therefore, the particular date, the 2nd day of March 1883 (the date on which the draft Bill was published in the Gazette, and leave was obtained to introduce the Bill in Council) was declared to be the latest date on which there should be free action on the part of *zamindars* to assert their private rights so as to prevent the accrual of special tenant-rights. From the wording of that sub-section, it was intended that, in determining whether land is the private land of the proprietor, regard should be had to any declaration made before the 2nd March 1883 by the landlord, and communicated to the tenants, in respect to the reservation of the proprietor's right over the land as his private land; the words "any other evidence that may be produced" in that sub-section mean, therefore, any other evidence, tending in the same direction, that

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[1] Mozaffarpur Settlement Report, p. 345; Darbhanga Settlement Report, p. 103; North Monghyr Settlement Report, p. 87.

[2] *Nilmoni Chuckerbutti* v. *Bykant Nath Bera* [1890], I. L. R., 17 Cal. 466.

may be produced, to show the assertion of any title on the part of the proprietor, and communicated to the tenant before that date.

Sub-section (*2 a*) is new. Compare section 109B, *ante*, page 509. Section 147A would apparently also apply in suits for a declaration that land is legal 'private land.'

The mere taking of a lease of land as "*zirát*" is not enough if strict proof be not forthcoming[1] that the letting was before the second day of March 1883.

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[1] *Sher Bahadur Sahu* v. *Mackenzie*, 7 C. W. N. 400.

CHAPTER XII.

DISTRAINT.

121. Where an arrear of rent is due to the landlord of a *raiyat* or under-*raiyat*, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court, requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,— **Cases in which an application for distraint may be made**

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding, and have been reaped or gathered, and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Rregistration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or **Bengal Act VII., 1876.**

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year unless that sum is payable under a written contract, or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Commencement.

Chapter XII. came into operation on the 1st February 1886—*see* Act XX. of 1885.

Meaning of "rent."

The word "rent" in this Chapter includes also money recoverable under any enactment for the time being in force as if it was rent—*see* section 3, clause (*5*), *ante*, pages 61, 67.

Distress in English Law.

A distress, in English Law, "is the taking without legal process cattle or goods *as a pledge*, to compel the satisfaction of a demand, the performance of a duty, or the redress of an injury."[1] The power of distress appears to have been derived from the ancient feudal law, and to have been substituted for a forfeiture of the tenant's estate.

Distraint introduced into Bengal by Regulation XVII. of 1793.

Distraint, which was described by the Rent Law Commissioners as "an off-set of English Law," was formerly unknown in India, and "was originally introduced into this country by Regulation XVII. of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house, or on the premises of the defaulter, or of any other person) belonging to their tenants."[2]

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[1] Woodfall's *Landlord and Tenant*, 17th Ed., p. 468.
[2] Rent Commission's Report, p. 8.

This continued to be the law until 1859, when the power of distraint was subjected to various restrictions, and limited to the produce of the land on account of which rent was due.[1] These provisions were re-enacted in Bengal Act VIII. of 1869.[2] Under the law, as it stood prior to the Bengal Tenancy Act, the landlord could distrain without recourse to the Civil Court or the Collector, but he could not bring to sale the "crops or products" distrained without assistance of the Civil Court *Amin*.

Restrictions on the power of distraint in Bengal under the old law.

The Rent Commission suggested the total abolition of this cumbrous and harassing procedure: this proposal, however, did not find favour in its entirety with the Legislature, which considered it expedient to preserve the power of distraint, but subject to considerable restrictions and limitations. The nature of these restrictions will appear from the following summary of their scope and purpose:—

Proposed abolition of distraint.

Present restrictions on distraint.

The modified power of distraint, which it is now proposed to allow, can be used by any landlord of a *raiyat* or *under-raiyat* for the recovery of an arrear of rent which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant..... The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for one month with a view to the possibility of the owner of the distrained property claiming compensation as for a wrongful distraint; and, on the expiration of that period, it will be paid to the landlord.[3]

The most important modification effected in the old law by section 121 is, that no distraint can be effected now (save in cases excepted under section 141, *post*) without the intervention of the Civil Court.

Distraint through Civil Court.

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[1] Ss. 112 to 145 of Act X. of 1859.
[2] Ss. 68 to 101.
[3] Report of the Select Committee—*see* Selections, p. 203.

Distraint by registered proprietor or mortgagee.

An application for distraint may not be made by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act—*see* proviso (1) to the present section.

Distraint by joint landlords.

Under the English Law, "one joint tenant—as, for instance, one of many trustees—may distrain alone; but he must avow or justify such distress in his own right, and as bailiff of the others."[1] "Tenants in common, who are obliged to avow separately, should make several distress, each for his own share."[1] Under the present Act, joint landlords cannot distrain except collectively, or through a common agent.[2]

Further provisions of section 121.

The property which is sought to be distrained must be in the possession of the cultivator; and no application can be made for distraining produce belonging to a sub-lessee to whom the holding has been sub-let with the written consent of the landlord.[3] What may be distrained is clearly set forth in the section itself.[4]

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[1] Woodfall's *Landlord and Tenant*, 17th Ed., p. 481.

[2] S. 188, *post; vide* s. 68 of Ben. Act VIII. of 1869.

[3] Under the old law also no distraint could be levied upon crops grown, not by the tenant, but by another person.—*Mohinee Dassee* v. *Ram Kumar Kurmokar* [1864], W. R., Sp. No. (Act X. Rulings), 77.

[4] In the case of *Sheo Pershad Tewary* v. *Mussumat Mohema Beebee* [1869], 1 N.-W. 53, the learned Judges made the following observations regarding the meaning of the word "produce" used in Act X. of 1859: "We have considered the sections of Act X. of 1859, by virtue of which the right of distress is now exercised in these Provinces; and, having regard to the whole of those sections, we are of opinion that the term 'produce of *the* land' is to be construed as equivalent to that which can be gathered and stored—crops of the nature of cereal, or grass, or fruit crops; and it does not apply to the trees from which the crops, if fruit crops, are gathered The law of distress in Act X. of 1859 is substantially a re-enactment of the law of distress provided by Regs. XVII. of 1793 and XXXV. and XLV. of 1795, and that, again, has evidently been adopted from the English Statute Law. Now, by Stat. Geo. II., c. 19, s. 8, landlords are empowered to distrain corn, grass, or other product growing upon any part of the land demised, and it has been *held* that 'the term *product*, in the section above quoted, applies to such products only as are similar to those specified, to all of which the process of becoming ripe and of being cut, gathered, made, and laid up when ripe, is incidental. Hence trees, shrubs, and plants growing in a nursery ground cannot be distrained for rent'—Selwyn's N. P., p. 669. The provisions of Act X. appear to us also to refer only to such produce of the land as becomes ripe, and is cut, gathered, and stored."

An application for distraint may be made under section 188, *post*, by the authorized agent of a landlord who is himself competent to apply. **Distraint on application of Agent.**

122. (*1*) Every application under the last-foregoing section shall specify— **Form of application.**

(*a*) the holding in respect of which the arrear is claimed and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon; and, when an amount in excess of the rent payable by the tenant in the last-preceding agricultural year is claimed, the contract or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and,

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints. **Act V. of 1908.**

Sub-section (2).

Sub-section (2) of section 122 must be read in conjunction with Order VI., Rules 14 and 15, of the First Schedule of the Code of Civil Procedure (Act V. of 1908).

Court-fee.

Every application for distraint is subject to a court-fee of eight annas—*see* Act VII. of 1870, Schedule II., article 1, clause (*b*), second paragraph.

A separate application must be filed in respect of each holding on which the distraint is to be effected.[1] Interest, but not damages, may be recovered by distraint.

Procedure on receipt of application.

123. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order

[1] *Sheobarat* v. *Naurangdeo Narain* [1901], I. L. R., 28 Cal. 364.

prohibiting the removal of the produce pending the execution of the order for distraint.

See notes on section 69 (*3*), page 333, *ante*, which provides that an order of the Collector for appraisement shall not prevent a distraint under this Chapter. Reference.

The High Court, under the powers vested in it by section 142, *post*, has prescribed the following rules regarding the procedure to be observed by the subordinate Courts in the hearing of applications under section 121:— Rules by High Court.

6. All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (*2*), shall be on oath or affirmation.

7. .....A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint; and a copy of the notice under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.[1]

124. If an application is admitted under the last-foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself, or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court: Execution of order for distraint.

Provided that produce, which, from its nature, does not admit of being stored, shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

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[1] *See* Appendix VII., *post*, to this work.

Service of demand and account.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but, if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

References.

Cf. section 116 of Act X. of 1859 and section 72 of Bengal Act VIII. of 1869.

Right to reap, &c., produce.

126. (1) A distraint under this Chapter shall not prevent any person from reaping, gathering, or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other place as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case, the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Cf. section 118 of Act X. of 1859 and section 74 of Bengal Act VIII. of 1869. **References.**

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained, and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction: **Sale-proclamation to be issued unless demand is satisfied.**

Provided that, when the crops or products distrained, from their nature, admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate, for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage. **Place of sale.**

Cf. section 129 of Act X. of 1859 and section 86 of Bengal Act VIII. of 1869. **References.**

129. (1) Crops or products, which, from their nature, admit of being stored, shall not be sold before they are reaped or gathered and are ready for storing. **When produce may be sold standing.**

(2) Crops or products, which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered; and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and, if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

References.

Cf. section 129 of Act X. of 1859 and section 86 of Bengal Act VIII. of 1869.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

References.

Cf. section 130 of Act X. of 1859 and section 87 of Bengal Act VIII. of 1869.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs; and, in default of such payment, the property shall be put up again and sold.

References.

Cf. section 131 of Act X. of 1859 and section 88 of Bengal Act VIII. of 1869.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid. **Certificate to be given to purchaseer.**

Cf. section 131 of Act X. of 1859 and section 88 of Bengal Act VIII. of 1869. **References.**

134. (*1*) From the proceeds of every sale of distrained property under this Chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules[1] to be made, from time to time, by the Local Government in this behalf. **Proceeds of sale how to be applied.**

(*2*) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Cf. section 132 of Act X. of 1859 and section 89 of Bengal Act VIII. of 1869. **References**

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.[2] **Certain persons may not purchase.**

Cf. section 133 of Act X. of 1859 and section 90 of Bengal Act VIII. of 1869. **References.**

136. (*1*) If, at any time after a distraint has been made under this Chapter, and before the sale of the dis- **Procedure where demand is paid before the sale.**

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[1] For the rule framed by the Local Government, *see* Rule 206 in Chapter VII. in Appendix V., *post*, to this work.

[2] S. 185 of the Indian Penal Code. prescribes the penalty for breach of this section.

trained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(*2*) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(*3*) A receipt granted under this section to an owner of distrained property, not being the defaulter, shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(*4*) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him unless, in the meanwhile, the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint, and claiming compensation in respect of the same.

(*5*) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

References. *Cf.* section 121 of Act X. of 1859 and section 77 of Bengal Act VIII. of 1869.

137. (1) When an inferior tenant, on his property being lawfully distrained under this Chapter for the default of a superior tenant, makes any payment under the last-foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, shall, in like manner, be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last-foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

138. When land is sub-let, and any conflict arises under this Chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

139. When any conflict arises between an order for distraint issued under this Chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid, under section 134, to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

140. No appeal shall lie from any order passed by a Civil Court under this Chapter; but any person whose property is distrained on an application made under

Suit for compensation for wrongful distraint.

section 121, in any case in which such an application is not permitted by that section, may institute a suit against the applicant for the recovery of compensation.

Jurisdiction of Small Cause Court.

The Small Cause Court has no jurisdiction to entertain suits for compensation for illegal, improper, or excessive distress or attachment.[1]

The jurisdiction of the Small Cause Court is not excluded when the distraint is not by the landlord himself. For example, if a *raiyat* were to sub-let his holding, and, on his failure to pay the rent thereof, his landlord were to seize and sell the goods or crops of the *under-raiyat*, a suit by the latter against the *raiyat* for damages would lie in the Small Cause Court.[2]

A suit for money paid to redeem a distress is cognizable by the Small Cause Court, being on the same footing as any other suit, where it is alleged the defendant has received money which, in justice and equity, belongs to the plaintiff. But a claim for damages for illegal distraint stands in a different position, even though the relationship of landlord and tenant does not exist between the parties. Article 35 (*j*) of the Second Schedule to the Provincial Small Cause Courts Act (IX. of 1887) applies generally to acts done under colour of distress; and the relationship between the parties, whether in question or not, would not alter the jurisdiction of the Court.[3] A suit, therefore, for money paid to redeem a distraint, and also for damages, is not entirely a suit of the nature cognizable by the Small Cause Court, and so a second appeal would not be barred in such a case under section 586 of the Code of Civil Procedure (S. C., section 102 of Act V. of 1908).[3]

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[1] Art. 35 (*j*) of Sch. II. to the Provincial Small Cause Courts Act (IX. of 1887): *Hyder Ali* v. *Jafar Ali* [1875], I. L. R. 1 Cal 183.

[2] *Modhu Sudhan Das* v. *Annoda Prosad De*, Rule 1349 of 1886 (PETHERAM, *C. J.*, and BEVERLEY, *J.*), decided on 3rd December 1886.

[3] *Dewan Roy* v. *Sundar Tewary* [1896], I. L. R., 24 Cal. 163.

Similarly, a suit to establish a right to a standing crop on the basis of title to the land is not cognizable by the Small Cause Court.[1]

When suit for recovery of compensation can be maintained.

The Calcutta High Court has, upon a literal construction of section 140, *held* in one case[2] that a suit under the section for the recovery of compensation can be maintained only on the ground that the application on which the distraint was made was in violation of the provisions of section 121; and that, the right to apply for distraint being given to landlords whose names are registered in the Collector's Register, a tenant cannot, in such a suit, contend that he is a tenant of a third party whose name is not registered.

In a later case,[3] however, a wider interpretation has been put on the section. A suit was brought by the plaintiff claiming compensation from the principal defendant on the ground that he wrongfully distrained the plaintiff's crop as belonging to the second defendant. On the objection of the principal defendant that the suit was defective for non-joinder of the plaintiff's brother, who had an interest in the holding, the brother was added as a co-plaintiff. That was done, however, beyond the period of limitation prescribed for the institution of suits under section 140. The lower Courts decreed the plaintiff's claim for compensation to the extent of his interest, *viz.*, a moiety. In second appeal, it was contended on behalf of the principal defendant that the suit would "not lie at all, because such a suit could be brought only under the provisions of section 140 of the Bengal Tenancy Act, and, under that section, a suit for compensation, where property has been distrained on an application made under section 121 of the Act, lies only in a case in which such an application is not permitted by the latter section." The learned Judges *held*[3] as follows :—

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[1] *Dakhyani Debea* v. *Dole Gobind Chowdhry* [1893], I. L. R., 21 Cal. 430.
[2] *Hanumun Ahir* v. *Mussamat Gobinda Koer* [1895], 1 C. W. N. 318.
[3] *Jagdeo Sing* v. *Padarath Ahir* [1897], I. L. R., 25 Cal. 285.

We think that there is nothing in section 140 to exclude an action of this kind in a case like that before us, in which the landlord is found to have abused his power of distraint by distraining the crops, which belong to the tenant, on the pretence that they belong to another person in collusion with himself. There has been an invasion of the rights of the tenant, for which he is entitled to a remedy; and, if the case is not one of the kind contemplated by section 140, he is not, so far as we can see, deprived, by the provisions of that section, of the ordinary right of action which any person who suffers from a tortious act has against the tortfeasor.

Onus on plaintiff to prove rent payable.

Where the plaintiff sues for compensation on the ground that the defendant landlord has distrained his crops on the false allegation of a higher *jama* than he actually paid, the Calcutta High Court *held*[1] that the *onus* was on him to prove the annual rent payable by him.

Plaintiff to prove loss or damage sustained.

In order to recover a decree, the plaintiff must, in a suit for compensation, give some evidence of the loss or damage he has sustained.[2]

Agents.

The difficulties which arose under the old Acts regarding the liability of landlords for the acts of their agents[3] are avoided under the present enactment. For, in the first instance, a distraint can only be effected through the Civil Court, and, in the second place, the application for the purpose must be signed and verified in the manner prescribed by the Code of Civil Procedure (Act V. of 1908). It must therefore be by a recognized agent of the landlord. Section 145, *post*, declares that every *naib* or *gumashta* "empowered in this behalf" by a written authority under the hand of the landlord shall, for the purposes of suits and applications, be deemed to be a recognized agent of the landlord within the meaning of the Code of Civil Procedure.

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[1] *Chunder Kant Mukerji* v. *Hem Lall Mondal* [1896], 1 C. W. N. 463.

[2] This is the ordinary principle, and it was enunciated so long ago as in the case of *Oojan Dewan* v. *Prannath Mundul* [1867], 8 W. R. 220.

[3] See *Ramjai Mandal* v. *Kali Mohan Rai* [1863], Marshall's Reports, 282; *Shama Soonduree Debia* v. *Mallyut Mundul* [1869], 11 W. R. 101.

The period of limitation for a suit for compensation under section 140 will be governed by article 28 or 29, and not by article 2, Schedule I., Act IX. of 1908, the Indian Limitation Act, and will be one year from the date of the last act done under the provisions of section 124 (*ante*, page 547) in order to effectuate the distress.[1] Limitation.

The penalties for illegal interference with produce are indicated in section 186, *post*. According to that section, any person attempting to levy a distress otherwise than in accordance with the provisions of Chapter XII. will be deemed to have committed criminal trespass within the meaning of sections 441 and 447 of the Indian Penal Code (Act XLV. of 1860). A tenant resisting a distraint "duly made" or forcibly or clandestinely removing any property "duly distrained under this Act" will be equally liable. Penalties.

141. (*1*) When the Local Government is of opinion that, in any local area, or in any class of cases, it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this Chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this Chapter to the Civil Court: Power for Local Government to authorize distraint in certain cases.

Provided that every person distraining any produce under such authorisation shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an appli-

[1] *Jagatjiban Nanda Rai* v. *Sarat Chandra Ghosh* [1903], 7 C. W. N. 728; *Kali Charan Shaka* v. *Kismat Mollah* [1907], 11 C. W. N. lxxvi. But *see* also *Tarini Charan Basu* v. *Sambunath Pandey*, 3 W. R. (Act X.) 139.

cation for distraining the produce; and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(*2*) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(*3*) The Local Government may at any time rescind any order made by it under this section.

No orders under this section appear to have been issued as yet.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules[1] consistent with this Act for regulating the procedure in all cases under this Chapter.

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[1] For the High Court's Rules, *see* Appendix VII., *post*, to this work.

CHAPTER XIII.

JUDICIAL PROCEDURE.

This Chapter forms one of the most important parts of the Bengal Tenancy Act. Before discussing, however, the rules of procedure which it lays down, it is necessary to indicate briefly the principles and assumptions on which it proceeds.

Chapter XIII. pre-supposes existence of relationship of landlord and tenant.

In the first place, the law pre-supposes that the relationship of landlord and tenant exists between the parties before its provisions can be applied.[1] Section 157, *post*, forms no exception to this rule, for a proceeding under that section is not a simple action for the ejectment of a trespasser: the law gives to the landlord the option of treating the defendant as a tenant, claiming, as an alternative relief, that the person who had come on the land without any title may be declared liable to pay a fair and equitable rent for the land occupied by him.

How the relationship of landlord and tenant may arise.

The relationship of landlord and tenant may come into existence (1) under a valid contract between the parties; (2) from conduct; (3) by operation of law, or (4) partly by contract and partly from conduct or operation of law.[2]

Landlord bound to give peaceable possession.

In the second place, the landlord is bound to put the tenant into peaceable possession of the property. When a person lets his property, there is an implied contract that he will give to his

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[1] *Hari Prosad* v. *Kunjo Behari Saha* [1862], W. R., F. B., 29; *Nandi Das* v. *Tewari Lal* [1864], W. R., Sp. (Act X.), 75; *Syeá Jeshan Hossein* v. *Bakar* [1865], 3 W. R. (Act X.) 3; *Bharat Chunder Sen* v. *Oseemooddeen* [1866], 6 W. R. (Act X) 56; *Ramessur Audhikaree* v. *R. Watson & Co.* [1867], 7 W. R. 2; *Dayal Chunder Sahoy* v. *Nobin Chunder Adhikary* [1871], 16 W. R. 235: 8 B. L R. 180; *Mohunt Jalha* v. *Koylash Chunder Dey* [1868], 10 W. R 407; *Chunder Nath Nag Chowdhry* v. *Assanoollah Mundul* [1868], 10 W. R. 438; and *Luchmeeput Doss* v *Shaikh Enaet Ali* [1874], 22 W. R. 346.

[2] Field's Digest, p. 5.

lessee peaceable possession of the same,[1] and it is not necessary for the lessee or tenant to apply to be put into possession.[2]

A landlord cannot claim rent where the lessee has never obtained possession.[3] The landlord is bound to do something more than merely sign the lease and then say he is entitled to the rent. He is bound to put the tenant into possession of the land, and secure him quiet enjoyment thereof.[4] Unless and until he does so, he is not entitled to the rent.[5]

Covenant for quiet enjoyment runs with the land.

A covenant for quiet enjoyment runs with the land.[6] A covenant is said to run with the land when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land.[7] If the landlord dispossesses the tenant, or interferes with his possession in any way, he cannot claim rent.[8] He is further bound to protect him against eviction by title paramount,[9] but not against the wrongful acts of third parties.[10]

When tenant entitled to a suspension of rent.

It is not only actual eviction of the tenant which suspends his liability to pay rent; any act of the landlord substantially interfering with the enjoyment of the demised property would entitle the tenant to a suspension of the rent during such interference, even though there may not be actual eviction;[11] nor, in

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[1] *Munnee Dutt Singh* v. *Campbell* [1869], 11 W. R. 278; *Radha Nath Chowdhry* v. *Joy Soonder Moitra* [1878], 2 C. L. R. 302.

[2] *Munnee Dutt Singh* v. *Campbell* [1869], 12 W. R. 149.

[3] *Hurish Chunder Koondoo* v. *Mohinee Mohun Mitter* [1868], 9 W. R. 582; *Bullen* v. *Lalit Jha* [1869], 3 B. L R. (App.) 119.

[4] *Kristo Soonder Sandyal* v. *Kumar Chunder Nath Roy* [1871], 15 W. R. 230.

[5] *Shama Prosad Ghose* v. *Taki Mullick* [1901], 5 C. W. N 816.

[6] *Lewis* v. *Campbell* [1819], 8 Taunt 715; *Campbell* v. *Lewis* (in error) [1820], 3 B. & Ald. 392.

[7] Woodfall (16th Ed.), 172.

[8] *Kadumbini Dossia* v. *Kashee Nath Biswas* [1870], 13 W. R. 338; *Gobind Chand Juttee* v. *Mun Mohun Jha* [1870], 14 W. R. 43; *Hoymobutty Dossee* v. *Srikishen Nundee* [1870], 14 W. R. 58: Woodfall, 438; *Mahomed Jiaulla* v. *Sukheanissa Bibi* [1910], 14 C. W. N. 446.

[9] *Gopanund Jha* v. *Lalla Gobind Pershad* [1869], 12 W. R. 109; *Brojonath Paul Chowdhri* v. *Heera Lal Paul* [1868], 1. B L. R. (A. C.) 87: 10 W. R. 120.

[10] *Donselle* v. *Giridhari Singh* [1874], 23 W. R. 121: Woodfall, 439.

[11] *Dhunput Singh* v. *Mahomed Kasim Ispahain* [1896], I. L. R., 24 Cal. 296 followed and discussed in *Mahomed Jiaulla* v. *Sukheanissa Bibi* [1910], 14 C. W. N. 446). *See* also *Surendra Nath Guha* v. *Kalikanta Siromani* [1910], 14 C. W. N. cclxxxiv., in which it was *held* that realization of rent from under-tenants amounted to eviction of the tenant.

order to disentitle the landlord from claiming or recovering rent, is it necessary that there should be a *complete* eviction: wilful disturbance of the lessee's quiet possession and enjoyment is a sufficient disentitling cause.[1] If the interference be in respect of only a portion of the property, there should be no apportionment of the rent, the whole rent being equally chargeable upon every part of the land.[2]

In one case,[3] however, it was held that, when the superior holders of a tenure over the plaintiff compelled his tenants to attorn to them, and pay rent accordingly, it was not an ouster in law of the plaintiff; and that the plaintiff was entitled to a decree for rent against the defendants, who were said to have a cause of action for damages against the superior holders of the tenure. The correctness of this decision, however, is open to question. Although mere discontinuance of rent by the *raiyats* does not amount to dispossession,[4] yet, if the *raiyats* withhold rent at the instance of the landlord, it is a disturbance of the quiet possession of the tenant; and receipt of rent by a landlord from his immediate tenant's under-tenants is tantamount to eviction.[5]

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[1] *Rani Lalita Sundari* v. *Rani Surnomoye Dasee* [1900], 5 C. W. N. 353.

[2] *Harro Kumari Chowdhrani* v. *Purna Chandra Sarbogya* [1900], I. L. R., 28 Cal 188. In the case of *Gopanand Jha* v. *Lala Gobind Pershad* [1869], 12 W. R. 109, PEACOCK, *C.J.*, said as follows: "According to the English law, if the lands demised be evicted from the tenant, or recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such eviction, and if he is evicted from part, the rent is to be diminished in proportion to the land evicted. It is laid down in Bacon's Abridgment, Tit. Rent (M), 'where a lessor enters forcibly into part of the land, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortious entry, and it seems to be the better opinion and the settled law at this day that the tenant is discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be encouraged to injure or disturb his tenant in his possession, whom, by the policy of the law, he ought to protect and defend;' and it has been held that, when a lessee is evicted by title paramount to that of his lessor, an apportionment of rent may take place in an action brought for the rent. It appears to me that the onus is on the lessor, who claims to be entitled to an apportionment, to show what is the fair rate of the lands out of which the tenant was not evicted."

[3] *Chunder Nath Bhuttacharjee* v. *Juggut Chunder Bhuttacharjee* [1874], 22 W. R. 337.

[4] *Tarini Mohun Mozumdar* v. *Gunga Prosad Chuckerbutty* [1887], I. L. R., 14 Cal. 649; *Hunt* v. *Cope* [1775], 1 Cow. 242.

[5] See *Surendra Nath* v. *Kalikanta* [1910], 14 C. W. N. cclxxxiv.

Where, on a demand for rent, the tenant alleges not having been put into possession, the onus is on him.

Where, however, a demand for rent is met with the allegation that the tenant has not been put in possession of the entire land demised, the *onus* is on him, especially where rent has been paid for a number of years under the lease.[1] But a tenant who pleads that he has not been put in possession of the entire tenancy is not bound[2] to sue for a reduction of rent under section 38 or section 52 (pages 210 & 265, respectively), *ante*.

Effect of lease purporting to create a larger interest than the lessor possesses.

Where a lease purports to grant a larger interest than the lessor possesses, it is only invalid or void to that extent, and no more. If a tenant were to create a lease extending beyond his term, the lease would take effect only for the term, and not beyond. Should he, however, acquire a larger interest during the subsistence of the lease, the lease would extend to that interest.[3]

Grant of patni by Hindu widow.

A Hindu widow, who is in possession of her deceased husband's estate, cannot grant a *patni* unless for a necessity recognized by the Hindu Law. If it were created without any such necessity, the *patni* would only be voidable, not void, as the reversioner might elect to assent to it, and treat it as valid.[4]

Position of lessee who brings a suit for possession of land, and obtains a decree for a part only.

Although there may not be an eviction in the proper ense of the word, when the lessee brings a suit for possessions of the lands demised, and obtains a decree only for a part, the result of which is to preclude him from getting a substantial part, his position is the same as if he had been evicted. He, therefore, has the same equity for an apportionment as if he had been evicted.[5]

Act VII. of 1876.

As already pointed out,[6] the provisions of section 78 of the Land Registration Act debar proprietors, managers, and mort-

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[1] *Beni Madhub Mukerji* v. *Sridhar Deb Ghatak* [1881]; 10 C. L. R. 555.

[2] *Siba Kumari Debi* v. *Biprodas Pal Chowdhry* [1908], 12 C. W. N. 767.

[3] *Hurish Chunder Roy Chowdhry* v *Sree Kalee Mookerjee* [1874], 22 W. R. 274; *Sarat Sundari Debi* v. *Binny* [1876], 25 W. R. 347; *Modhu Sudan Singh* v. *Rooke* [1897], 1 C. W. N. 433: s. c., I L. R., 25 Cal. 1: L. R., 24 I. A. 164. *See* also Reg. XVIII. of 1812, s. 2.

[4] *Modhu Sudan Singh* v. *Rooke* [1897], 1 C. W. N. 433.

[5] *Imambandi Begum* v. *Kamleswari Pershad* [1894], I. L. R., 21 Cal. 1005: L. R., 21 I. A. 118.

[6] *See* notes to s. 60, *ante*, pp. 294, *et seq.*

gagees of estates or revenue-free properties from recovering rent due to them unless their names have been registered under that Act, if objection be raised to their claims on this ground. The prohibition, however, relates to their recovering the rent, but not to their bringing the action. A *patnidar* has been held[1] not to be a proprietor within the meaning of sections 38 and 78 of the Land Registration Act.

The Cess Acts.

Under the old Cess Act (Bengal Act X. of 1871), it was held[2] that, under section 7, the plaintiff was precluded from suing for the rent of certain *bhaoli* lands which he had failed to include in his returns under that Act. Section 19 of the present Cess Act (Bengal Act IX. of 1880) has re-enacted the prohibition contained in section 7 of Bengal Act X. of 1871, and declares that "every holder of an estate or tenure in respect of which such notice (that is, a notice of valuation or re-valuation) has been served, shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged." And section 20 provides that—

Every holder of an estate or tenure in respect of which a return has been made as required by this Chapter shall be precluded from suing for or recovering—

(*a*) any rent whatsoever for any land, holding, or tenure forming part of the estate or tenure to which such return relates; but which has not been mentioned in such return, unless it be proved that the holding or tenure, for the rent of which the rent is claimed, was created subsequently to the lodging of such return;

(*b*) rent at any higher rate than is mentioned in such return for any land, holding, or tenure included in such return unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return.

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[1] *Sukurullah Kazi* v. *Bama Sundari Dasi* [1897], I. L. R., 24 Cal. 404.

[2] *Jugmohun Tewari* v. *Finch* [1882], I. L. R., 9 Cal. 62: s. c., 11 C. L. R. 100.

Owners of rent-free lands not bound to pay road-cess before publication of the valuation rolls.

The owners of rent-free lands are not bound to pay road-cess before publication of the valuation rolls, and no presumption in favour of such publication can be made under section 114, clause (*e*), of the Evidence Act.[1] But this rule does not apply to rent-paying land, in respect of which publication of the valuation rolls has to be made, not under section 52, but under section 35, of the Cess Act. It would appear from the provisions of sections 36 and 41 of the Act that "the publication of the valuation rolls is not a condition precedent to the attaching of liability to pay road-cess for rent-paying lands."[2]

Tenants cannot sue for determination whether one or the other defendant is their landlord.

Tenants have no right to bring a suit to determine whether one or the other defendant is their landlord.

"We know of no authority for holding that such a suit will lie. It is a case in which the defendants are practically made to interplead as regards their title. Section 28 of the Procedure Code enacts that all persons may be joined as defendants, against whom the right to any relief is alleged to exist, whether jointly, severally, or, in the alternative, in respect of the same matter. But that does not warrant a suit of this description. The plaintiffs had no cause of action against the second defendant, beyond that he demanded rent from them, and obtained a decree for that rent. Their only cause of action against the first defendant was, that he had, on some other occasion, demanded and received rent from them. That cannot be considered the same matter within the meaning of the section. Nor can the suit be regarded as an interpleader-suit, for a tenant cannot bring a suit against his landlord for the purpose of compelling him to interplead with any person other than a person making claim through such landlord. The Courts have held that the plaintiffs are not entitled to the relief asked for as against defendant No. 1, and, on the plaint, they are not entitled to any relief as against defendant No. 2. In fact they ask, as against that defendant, for nothing but a bare declaration, and they ask for it in a form in which a declaration could not be granted."[3]

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[1] *Ahsanullah Khan Bahadur* v. *Trilochan Bagchi* [1886], I. L. R., 13 Cal. 197; *Rash Behari Mukerjee* v. *Pitambori Chowdhrani* [1888], I. L. R., 15 Cal. 237.

[2] *Musst. Bhugwati Kunwari Chowdhrani* v. *Chhatarpat Singh* [1898], 2 C. W. N. 406.

[3] *Koylash Chunder Dutt* v. *Goluk Chunder Poddar* [1897], 2 C. W. N. 61.

But section 158 (*post*) practically enables a tenant to do this.

Denial of title by inducted tenant or licensee.

A tenant inducted on the land by another, or a licensee, is not permitted to deny the title of the person by whom he is brought on the land, or with whose license he comes upon it.[1] Section 116 of the Indian Evidence Act, 1872, gives statutory expression to this well-recognized principle of law. It declares that—

Act I., 1872.

> No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Denial of title.

Section 186A (*post*) prescribes a penalty for an unreasonable denial of a landlord's title.

Tenant may show that landlord's title has expired.

Although a tenant may not, during the continuance of the tenancy, deny that his landlord had a title at the beginning of such tenancy, he may show that such title has expired,[2] as by a sale to him by the landlord,[3] or has been defeated by a title paramount.[4]

Tenant may dispute derivative title.

The words "at the beginning of the tenancy" in section 116 of the Evidence Act (I. of 1872) apply only to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession. Section 116 does not debar the tenant from disputing a derivative title.

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[1] See *Jai Narain Basu* v. *Kadambini Dassi* [1869], 7 B. L. R. 723 note; *Bhyro Singh* v. *Leelanund Singh* [1874], 21 W. R. 153; *Sonamoni Bibi* v. *Dhan Munshi* [1896], 1 C. W. N. xxiv.

[2] *Ammu* v. *Rama Krishna Sastri* [1879], I. L. R., 2 Mad. 226; *Burn & Co.* v. *Rusho Moyee Dossee* [1870], 14 W. R. 85; *Mohun Mahtoo* v. *Meer Shumsool Hoda* [1873], 21 W. R. 5.

[3] *Vedu* v. *Nilkanth* [1896], I. L. R., 22 Bom. 420.

[4] *Gopanund Jha* v. *Lalla Gobind Pershad* [1869], 12 W. R. 109, quoted in foot-note 2 on p. 561, *ante*.

Accordingly, where a *raiyat* already in possession of a certain holding, executed a *kabuliyat* regarding the same in favour of the plaintiff claiming a derivative title from the last owner to the land in which the holding was situated, and paid rent thereunder, it was *held*[1] that he was not estopped by section 116 of the Evidence Act from disputing the latter's title.

Tenant may show want of title in landlord's alleged representative.

Similarly, a person who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other.[2]

Tenant may question title of alleged assignee of his admitted landlord.

Nor is a tenant precluded from questioning the title of the alleged assignee of his admitted landlord.[3]

Benamidars.

In a suit for rent brought by an alleged *patnidar* against a lessee, who admitted having executed a lease in favour of the superior landlord, the latter was *held*[4] to be entitled to raise the question whether the *patnidar* had a real interest, and was beneficially entitled, or was merely a *benamidar* for a third party. Even where the defendant in a former suit for rent failed to plead that the plaintiff was a mere *benamidar*, he has been *held* entitled to raise the question in a subsequent action on the ground that, although it might have been made a defence in the previous proceeding, yet, as it was not finally heard and decided by the Court, within the meaning of section 11 of the Code of Civil Procedure, the defendant was not precluded from raising the question in the second action, and claiming a decision upon it.[5]

Act V. of 1908.

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[1] *Lal Mahomed* v. *Kallanus* [1885], I. L. R., 11 Cal. 519. *See* also *Cornish* v. *Scarell* [1828], 8 B. & C. 471; *Hall* v. *Butler* [1839], 10 A. & E. 204; *Brijonath Chowdhry* v. *Lall Meah Munneepooree* [1870], 14 W. R. 391; *Jesingbhai* v. *Hataji* [1879], I. L. R., 4 Bom. 79.

[2] *Beni Madhub Ghose* v. *Thakurdas Mandal* [1866], B. L. R. F. B., 588: s. c., 6 W. R. (Act X.) 71; *Gouree Dass Byragee* v. *Jugurnath Roy Chowdhry* [1867], 7 W. R. 25.

[3] *Tillessuree Kooer* v. *Asmedh Kooer* [1875], 24 W. R. 101.

[4] *Donselle* v. *Kedar Nath Chuckerbutty* [1871], 7 B. L. R. 720; S. C., 16 W. R. 186; *Kedar Nath Chuckerbutty* v. *Donselle* [1873], 20 W. R. 352; *Musst. Inderbuttee Koeer* v. *Shaikh Muhboob Ali Ticcadar* [1875], 24 W. R 44.

[5] *Kailash Mondul* v. *Baroda Sundari Dasi* [1897], I. L. R., 24 Cal. 711.

It has further been held[1] that a mere *benamidar* cannot maintain a suit for ejectment, having neither title to, nor possession of, the property.

A mere benamidar cannot maintain a suit for ejectment.

Another well-recognized principle of law is, that the possession of a tenant is not adverse to his landlord.[2] When the relationship of landlord and tenant has once been proved to exist, the mere non-payment of rent, though extending over many years, is not sufficient to show that the relationship has ceased. And a tenant who is sued for rent, and contends that such relationship has ceased, is bound to prove his allegation by some affirmative proof:[3] mere non-payment of rent for a term of twelve years and more does not relieve an occupancy-*raiyat* from the status of a tenant so as to give him a title to the land.[4]

Possession of a tenant not adverse to landlord.

This principle applies so long as there is no dispute or conflicting claim.[5] But, where a tenant openly sets up an adverse title, and claims to hold adversely, limitation runs[6] from the time when the landlord has notice of the adverse title so set up.[7]

When limitation begins to run upon tenant setting up an adverse title.

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[1] *Issur Chundra Dutt* v. *Gopal Chandra Das* [1897], I. L. R., 25 Cal. 98. *See* also *Hari Gobind Adhikari* v. *Akhoy Kumar Mozumdar* [1889], I. L. R., 16 Cal. 364.

[2] *Shristeedhur Mozoomdar* v. *Kali Kant* [1864], 1 W. R. 171; *Watson & Co.* v. *Shurut Soondaree Debi* [1867], 7 W. R. 395; *Davis* v. *Kazee Abdool Hamed* [1867], 8 W. R. 55; *Grish Chunder Roy* v. *Bhugwan Chunder Roy* [1870], 13 W. R. 191; *Lakhoo Khan* v. *Wise* [1872], 18 W. R. 443; *Baboo Doolee Chund* v. *Sham Beharee Singh* [1875], 24 W. R. 113; *Haradhun Roy* v. *Hulodhur Chunder Chowdhry* [1876], 25 W. R. 56; *Raj Kishore Surma Chuckerbutty* v. *Grija Kant Lahiree* [1875], 25 W. R. 66.

[3] *Troyluckho Tarinee Dassia* v. *Mohima Chunder Muttack* [1867], 7 W. R. 400. *See* also *Rungo Lall Mundul* v. *Abdool Guffoor* [1878], I. L. R., 4 Cal. 314: s. c., 3 C. L. R. 119.

[4] *Poresh Narain Roy* v. *Kassi Chunder Talukdar* [1878], I. L. R., 4 Cal. 661.

[5] *Ram Chunder Singh* v. *Madho Kumari* [1885], I. L. R., 12 Cal. 484 (P. C.).

[6] *Huronath Roy* v. *Jogendur Chunder Roy* [1866], 6 W. R. 218.

[7] *Tekaitnee Goura Coomaree* v. *Bengal Coal Co.* [1870], 13 W. R. 129: s. c., 12 B. L. R. 282; *Tekaitnee Goura Coomaree* v. *Mussamat Saroo Coomaree* [1873], 19 W. R. 252; *Petambar Baboo* v. *Nilmoni Singh Deo* [1878], I. L. R., 3 Cal. 793; *Gopal Rao* v. *Mahadeo Rao* [1895], I. L. R., 21 Bom. 394; *Gossain Dalmir Puri* v. *Bepin Behary Mitter* [1891], I. L. R., 18 Cal. 520.

When tenant can set up adverse title.

It will thus be seen that the question, whether a defendant can set up an adverse title or not, depends on the nature of his original occupation. An admitted tenant's possession is not adverse to his landlord. Nor is the possession of a person between whom and the plaintiff the relationship is established by evidence. But a person trespassing on the land does not, by alleging tenancy in his written statement, preclude himself from setting up the defence of the Law of Limitation.[1]

Claim to title by virtue of adverse possession which commenced wrongfully.

Where an absolute title is claimed by virtue of an adverse possession which commenced wrongfully, the fact—that the person, under whose authority or license the holder came into such possession, acted in excess of his or her powers—will not affect the question. A Hindu widow, who had taken possession of her husband's estate during his prolonged absence, made a *maurosi* grant of a portion thereof to the plaintiff, with whom she had formed an intimacy; and the plaintiff remained in possession of the property under the said grant for more than twelve years, when the husband (the defendant) returned, and ejected the plaintiff. In a suit to recover the land, it was *held*[2] by MARKBY, *J.*, that, although the wife could not make a valid *maurosi* grant, yet, she having made one in fact, and the plaintiff having entered thereunder, he was, as against the husband, a wrong-doer and a trespasser, but, none-the-less, by his entry on the land, he put the defendant out of possession; and the Statute, therefore, commenced to run: and, in twelve years, the latter lost, and the plaintiff gained, a title. If the plaintiff had been let into possession as a tenant for a term, it is doubtful, remarked the learned Judge, whether he could have successfully pleaded the Statute of limitations as a protection to his possession during the term. But the plaintiff held as owner, and not as lessee, on the terms of paying a fixed sum annually to the former owner. The learned Judge continued:[2]—

[1] *Dino Monee Debia* v. *Doorga Pershad Mojoomdar* [1873], 21 W. R. 70: (s c.) 12 B. L. R. 274.

[2] *Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee* [1878], I. L. R., 4 Cal. 327.

It is true that what he pays is called a "rent;" and, under Regulation VIII. of 1819, the person entitled to receive such a rent would have remedies for the recovery of it in some respects similar to the remedies of a landlord for rent proper. But there is no reversion—no rights are reserved: the ownership of the land was intended to pass entirely to the plaintiff; the interest which Bhobotarinee intended to grant to the plaintiff in this land was heritable, transferable, and perpetual. The estate granted to the plaintiff is what English lawyers would call an estate-in-fee. I do not think, therefore, that the possession of the plaintiff can be considered as the possession, either of the actual grantor of the lease, or of the true owner of land: it was, I think, clearly possession on his own behalf.

The question of the *onus* of proof in suits between landlords and tenants is one of great importance. **The onus of proof—**

As already remarked, when once it is established that the persons at one time stood to each other in the relationship of landlord and tenant, or had been acting towards each other as such, the burden of showing that the relationship has ceased is on the person affirming it.[1] **when relationship of landlord and tenant has existed;**

But, where the tenancy is not admitted, and it has not been shown that the parties at any time stood to each other in the relationship of landlord and tenant, the burden of proving an alleged tenancy is on the party asserting it to exist.[2] **when that relationship is not shown to have existed;**

Where, in a suit for rent or recovery of possession or enhancement, the defendant sets up a rent-free title, the determination of the question at issue will depend on the particular facts of the case. The decisions of the Courts have not **when defendant sets up a rent-free title;**

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[1] S. 109 of the Evidence Act (I. of 1872). *See* also Ameer Ali and Woodroffe's Commentary on the Evidence Act, 2nd Ed., p. 746 and *Mohun Mahtoo* v. *Meer Shumsool Huda* [1873], 21 W. R. 5; *Rungo Lall Mundul* v. *Abdool Guffoor* [1878], I. L. R., 4 Cal. 314; and *Parbutti Dassi* v. *Ram Chand Bhuttacharjee* [1878], 3 C. L. R. 576.

[2] *Rammoni Mohurir* v. *Aleemuddeen* [1873], 20 W. R. 374; *Batai Ahir* v. *Bhuggobutty Koer* [1882], 11 C. L. R. 476.

The onus of proof (*contd.*)— when defendant sets up a rent-free title— (*contd.*);

by any means been uniform, nor do they indicate any general principle.[1] Where the title of the landlord is admitted in respect of a portion of the land in dispute, it was said[2] that it lay on the defendant to prove his plea of not being the plaintiff's *raiyat* as to the rest. In another case,[3] which was for assessment at enhanced rates, and not for resumption, and in which the defendant admitted that the main portion of the lands in dispute was rent-paying, but alleged that another portion was rent-free, it was stated that the plaintiff was not bound to prove that the lands were rent-paying until the defendant pointed out their precise situation. It was further *held*[4] that, where the defendant admits a tenancy for one portion of the land for which rent is sought, he must give some *primâ-facie* proof of an ostensible rent-free holding to bar a plaintiff in a suit for enhanced rent. But, where there is *primâ-facie* evidence that a tenant holds part of the land sought to be enhanced as paying rent, and part as rent-free, or where the tenant starts his case with *primâ-facie* proof of a rent-free title, the onus is shifted from the *raiyat* to the landlord.[5]

In a suit[6] for enhancement of rent, where the tenant undoubtedly holds and pays rent to the plaintiff for lands within his *zamindari*, the mere allegation by the defend-

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[1] *Gumani Kazi* v. *Harihur Mukerji* [1863], W. R., Sp. No. (F. B.), 115; *Matungini Debi* v. *Mohammed* [1864], W. R., Sp. No. (Act X.), 30, *Bissessur Chuckerbutty* v. *Wooma Churn Roy* [1867], 7 W. R. 44; *Purseed Narain Singh* v. *Bissessur Dyal Singh* [1867], 7 W. R. 148; *Prodhan Gopal Singh* v. *Bhoop Roy Ojha* [1868], 9 W. R. 570; *Raj Kishore Mookerjee* v. *Hureehur Mookerjee* [1868], 10 W. R. 17; *Prem Chand Barik* v. *Brojo Nath Koondoo* [1868], 10 W. R. 204; *Harihur Mookhopadhya* v. *Madub Chander Babu* [1871], 8 B. L. R. 566: 14 Moore's I. A. 152; *Arfun Nissa* v. *Peari Mohun Mukerjee* [1876], I. L. R., 1 Cal. 378.

[2] *Gooroo Prosad Ray* v. *Juggobundoo Mozumdar* [1862], W. R. (F. B.), 15: 1 Hay 228.

[3] *Sotto Churn Ghosal* v. *Mohesh Chunder Mitter* [1865], 3 W. R. 178.

[4] *Ashrufoonnissa* v. *Umung Mohun Deb Roy* [1866], 5 W. R. (Act X.) 48. *See* also *Huree Mohun Poddar* v. *Gureeboollah Mullick* [1874], 22 W. R. 417; *Ram Coomar Roy* v. *Beejoy Gobind Bural* [1862], 7 W. R. 535.

[5] *Nehal Chunder Mistree* v. *Hara Pershad Mundul* [1867], 8 W. R. 183.

[6] *Heera Ram Bhuttacharjee* v. *Ashruf Ali* [1868], 9 W. R. 103.

The onus of proof (*contd.*)—

ant that a portion of those lands is rent-free does not throw the *onus* on the landlord of proving what particular portion of the land which the tenant holds is rent-paying. The *onus* is primarily on the tenant to prove that such portion of the land is so held by him; when he has done so, the *onus* is then shifted upon the landlord to rebut such *primâ-facie* evidence.[1]

But, in a suit for resumption of lands alleged by the defendant to be *lakhiraj*, it has been *held*[2] that it was not enough to show that they lay within the ambit of the plaintiff's *zamindari*. The landlord was bound to show in the first instance that they were part of the *mâl* lands of his estate. This he could do by proof of receipt of rent, or that its proceeds were taken into account at the Permanent Settlement, or "by any other sufficient means."[3] The fact, that the land in dispute is surrounded by other lands held by the defendant, for which rent is paid, is evidence to show that the land forms part of his tenure, and is not his *lakhiraj* holding; but no decree can be passed adversely to the defendant on that fact unless it be held to establish a *primâ-facie* case in favour of the plaintiff.

when intermediate tenure set up

And where, in a suit by a landlord for *khas* possession of land, the defendant set up and proved an intermediate tenure, the *onus* was *held*[4] to be on the plaintiff to prove that the parcel of land sought to be resumed was outside such tenure.

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[1] *Newaj Bundhopadhya* v. *Kali Prosonno Ghose* [1880], I. L. R., 6 Cal. 543: (s. c.) 8 C. L. R. 6; *Akbur Ali* v. *Bhyea Lal Jha* [1880], I. L. R., 6 Cal. 666: (s. c.) 7 C. L. R. 497.

[2] *Hurrihar Mukhopadhya* v. *Madab Chandra Babu* [1871], 14 Moore's I. A. 152: (s. c.) 8 B. L. R. 566.

[3] *Bacharam Mondul* v. *Peari Mohun Banerjee* [1883], I. L. R., 9 Cal. 813: (s. c.) 12 C. L. R. 475; *Norendra Narain Rai* v. *Bishan Chandra Dass* [1885], I. L. R., 12 Cal. 182; but see *Raja Sahib Perhlad Sein* v. *Doorga Pershad Tewaree* [1869], 12 Moore's I. A., at p. 331.

[4] *Rajendro Kumar Basu* v. *Mohima Chandra Ghosh* [1894], 3 C. W. N. 763; *Rhidoy Kristo* v. *Nobin Chander Sen* [1883], 12 C. L. R. 457.

The onus of proof (*contd.*)— in suits for enhancement:

In a suit[1] for enhancement, in which it was contended that the land constituted a grant created before 1793, it was decided that the *onus* was on the plaintiff to show that the land was included in the *zamindari* at the time of the Permanent Settlement, and was therefore liable to enhancement. Where, in a suit[2] for enhancement, the defendant pleads that rent had been assessed on lands covered by hedges and ditches, and forming boundaries between fields; and that, according to custom, such lands were not liable to pay rent at all, the *onus* is on the defendant to prove the custom. Where a defendant admits being a tenant, but pleads that his tenancy is of a permanent character, and that he is entitled to hold at a rate which cannot be enhanced, the *onus* is on him to prove his allegation.[3]

In a suit[4] to recover arrears of rent at enhanced rates, the *onus* of proving both the quantity of land held by the defendant and the rates is upon the plaintiff. It lies on the plaintiff to make out distinctly the different grounds on which he rests his right to enhance, *viz.*, excess of area, increase of productiveness apart from the tenant's agency, or increase in the value of produce;[5] and he must prove that the present rate is not fair and equitable.[6]

In suit by shareholder for rent;

In a suit[7] for rent by a shareholder, when the defendant contends that he is not bound to pay otherwise than "by entirety" to the person entitled to the whole rent, the *onus* is on the plaintiff to show that he is entitled to sue for a fractional portion.

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[1] *Assanullah* v. *Bussarat Ali Chowdhry* [1884], I. L. R., 10 Cal. 920.

[2] *Haroo Chowdhry* v. *Joyeshar Nundee* [1866], 6 W. R (Act X.) 46.

[3] *Rajah Khetter Kristo Mitter* v. *Kumar Dinendra Narain Roy* [1897], 3 C. W. N. 202.

[4] *Golam Ali* v. *Baboo Gopal Loll Tagore* [1864], 1 W. R. 56.

[5] *Golam Ali* v. *Gopal Lal Thakoor* [1868], 9 W. R. 65; *Poolin Beharee Sein* v. *Watson & Co.* [1868], 9 W. R. 190.

[6] *Hills* v. *Jendar Mundul* [1864], 1 W. R. 3.

[7] *Lalun* v. *Hemraj Singh* [1873], 20 W. R. 76.

The onus of proof (*contd.*)—when defendant claims reduction, or pleads remission, of rent;

Where a defendant claims reduction of rent on the ground of diluvion, the *onus* is on him to prove what lands have been washed away:[1] So also when he pleads remission of rent.[2]

in suit by auction-purchaser for enhanced rent;

In a suit,[3] by a purchaser at a sale for arrears of revenue, to enhance the rents of certain *taluks*, the *onus* of proving that the *taluks* had been held at a fixed and invariable rent twelve years antecedent to the Permanent Settlement is upon the person setting up such a title. Proof of existence of the tenure from the time of the Decennial Settlement is sufficient to bar a suit for enhancement when the plaintiff is not an auction-purchaser; but, when the plaintiff is an auction-purchaser, he must show when he purchased before he can insist upon direct proof of the existence of the tenure twelve years prior to the Decennial Settlement.[4]

in suit for enhanced rent of ancient taluk

In a suit[5] for enhanced rent of a *taluk*, the existence of which as an ancient *taluk* is undoubted, and when the only question in the suit is whether the rent is fixed or variable, the *onus* is first on the defendant to prove that he has held at a uniform rent for 20 years, and (if the defendant prove so much) then on the plaintiff to prove that the rent has varied since the Permanent Settlement. When a tenure-holder has proved that he has held the lands at a fixed uniform rent anterior to the Decennial Settlement, then, on failure of evidence of payment of a fluctuating rent by the *zamindar*, on whom the *onus probandi* lies, the tenure must be held to be an intermediate or dependent *taluk* within the meaning of section 51 of Regulation VIII. of 1793.[6]

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[1] *Savi* v. *Obhoy Nath Basu* [1865], 2 W. R. (Act X.) 28.

[2] *Bunwari Lall* v. *Furlong* [1868], 9 W. R. 239; *Rask Dhary Gope* v. *Khakon Singh* [1897], I. L. R., 24 Cal. 433.

[3] *Gopal Lall Thakoor* v. *Teluk Chander Rai* [1865], 10 M. I. A. 183: s. c., 3 W. R. (P. C.) 183.

[4] *Romesh Chander Dutt* v. *Modhoo Soodun Chuckerbutty* [1866], 6 W. R. 252.

[5] *Rushmonee Debea* v. *Hurronath Roy* [1864], 1 W. R. 280.

[6] *Bamasoondary Dassee* v. *Radhika Chowdhrain* [1869], 13 M. I. A. 248: s. c., 4 B. L. R. (P. C.) 8: 13 W. R. (P. C.) 11.

The onus of proof (*contd.*)—

in suit for enhancement of rent of tenure held from time of the Permanent Settlement;

Where enhancement is claimed under section 7 of the Bengal Tenancy Act, and the plaintiff's case is, that he is entitled to receive as a fair rent a greater share of the tenure-holder's profit, it is for him to start his case by proving that the existing rate was below the customary rate payable by persons holding similar tenures in the vicinity, or that it was not fair and equitable; but the evidence in that behalf must be of a character sufficient to throw on the defendants the burden of proving that the existing rate is fair and equitable.[1]

when purchase has been made at a revenue-sale;

In considering the right of a purchaser at a revenue-sale seeking to get rid of incumbrances, it is necessary to bear in mind the following remarks of their Lordships of the Judicial Committee of the Privy Council:—

> In the assertion of this right, the auction-purchaser, no doubt, in many cases, is allowed to have the benefit of a certain presumption, and, by virtue thereof, to throw the burden of proof on his opponent, the presumption being founded mainly upon the principle that every *bigha* of land is bound to pay and contribute to the public revenue unless it can be brought within certain known and specified exceptions. In many cases a very heavy burden of proof has been placed upon the defendants, whose tenures have been questioned by auction-purchasers; and they had to prove, in circumstances of great difficulty, that their tenures did really exist at the date of the Perpetual Settlement, or even twelve years before, in order to escape the consequences of the claim. It is, however, to be observed that the course of modern legislation, and also of modern decision, has, if not in the case of *lakhiraj* lands, at least in the case of under-tenants, to a considerable degree, modified the rules laid down in the earlier cases by giving force to the contrary presumptions arising from proof of long and undisturbed possession.[2]

Where the purchaser of an estate at a revenue-sale brought a suit under the provisions of section 37 of Act XI. of 1859

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[1] *Hem Chandra Chowdhry* v. *Kali Prosanna Bhaduri* [1899], I. L R.., 26 Cal. 822. *See* notes to s. 7 (p. 93) and to s. 105 (*4*), p. 486, *ante*.

[2] *Forbes* v. *Meer Mahomed Hossein* [1873], 20 W. R. 44. See *Nityanund Roy* v. *Banshi Chandra Bhuiyan* [1899], 3 C. W. N. 341. *See* also notes to s. 179, *post*, as to permaneucy of tenures.

to eject the defendants from certain lands within the estate, which, he alleged, they were holding without any protected interest, but which they, on their side, claimed to hold as a subordinate *taluk* that had been in existence, and in the possession of themselves and their predecessors, since the time of the Permanent Settlement, and it was found as a fact that the tenure had been in existence since 1798-99, it was *held*[1] that, although, in the first instance, the burden of proof was on the defendants, yet it had been discharged by the proof of their long possession, and of the fact that the *taluk* was in existence a hundred years ago.

The onus of proof (*contd.*)— when purchase has been made at a revenue-sale (*contd.*);

When a defendant alleges that he holds a permanent tenure, the burden of proving that fact lies on him, and it is not for the plaintiff to show that he is not a tenure-holder, but only a *raiyat*.[2]

when defendant alleges a permanent tenure;

In one case[3] it has been laid down in somewhat broad terms that, if a plaintiff sets up, as against Government, a permanent or perpetual settlement, it is incumbent on him to make out that case. The application of this principle, it is submitted, must depend on the particular circumstances of each case.

when plaintiff sets up Permanent Settlement;

Where the lands in suit formed part of a *patni* belonging to the plaintiffs, and constituted the *raiyati* holding of one *M*, and, in execution of a money-decree against the said *M*, were sold and purchased by the defendant, in a suit[4] by the

when it is alleged that a raiyati holding is transferable;

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[1] *Nittyanund Roy* v. *Banshi Chandra Bhuiyan* [1899], 3 C. W. N. 341.

[2] *Nilmoni Moitra* v. *Mothura Nath Joardar* [1900], 4 C. W. N. clix

[3] *Prosonno Coomar Roy* v. *Secretary of State* [1899], I. L. R., 26 Cal. 792: s. c., 3 C. W. N. 695.

[4] *Kripamoyi Dabia* v. *Durga Govind Sirhar* [1887], I. L. R., 15 Cal. 89. In this case the learned Judges dissented from the view expressed in *Doya Chand Shaha* v. *Anund Chunder Sen Mozumdar* [1887], I. L. R., 14 Cal. 382 (PRINSEP and BEVERLEY, JJ.), in which it was held that "there was no presumption that any tenure held is not a transferable tenure, and a landlord, who sues for *khas* possession on the ground that a tenure sold was not transferable, must establish his case as an ordinary plaintiff." The subject-matter of this suit was also a "holding," and not a "tenure."

necessarily a party cannot be used as evidence against such tenant in a suit for arrears of rent.[1]

Admissibility of jaibaki papers.

Jaibaki papers, brought from the possession of the plaintiff, cannot be used against a defendant without showing that he has in some way agreed to them.[2]

Admissibility of jama-wasil-bakis and jamabandis.

Similarly, *jama-wasil-bakis* or collection-papers are not evidence by themselves. The mere production of such papers is not enough. But, when coupled with other evidence, they often afford a very useful guide to the truth.[3] Although they are not independent evidence of the amount of rent mentioned therein, it is perfectly legitimate to allow a person who has prepared them to refresh his memory from the same when giving evidence as to the amount of rent payable.[4] Where, however, tenants voluntarily signed a *jamabandi* prepared under section 9 of Regulation VII. of 1822, specifying the amounts of rent payable by them, they were *held*[5] to be bound by that document. *Jama-wasil-bakis* stand in the same position as *jamabandis*, and can be used only as corroborative evidence. Although, in one case, it was *held* that a *jamabandi* prepared by a Deputy Collector, while engaged in the settlement of land under Regulation VII. of 1822, was a public document within the meaning of section 74 of the Evidence Act (I. of 1872), and that it was not necessary to show that, at the time when such document was prepared, a *raiyat*, affected by its provisions, was a consenting party to the terms specified,[6] the view expressed there has been seriously questioned in another case.[7] In order to make the enhanced rent stated

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[1] *Kishore Doss* v. *Pursun Mahtoon* [1873], 20 W. R. 171. *See* also *Enayetoollah Meah* v. *Nubokumar Sircar* [1873], 20 W. R. 207; *Reasooddeen Mahomed* v. *McAlpine* [1874], 22 W. R. 540.

[2] *Boido Nath Parooye* v. *Russick Lall Mitter* [1868], 9 W. R 274.

[3] *Roushan Bibee* v. *Hurray Kristo Nath* [1882], I. L. R, 8 Cal. 926 (*see* p. 931).

[4] *Akhil Chunder Chowdhry* v. *Nayu* [1883], I. L. R., 10 Cal. 248.

[5] *Watson & Co.* v. *Mohendra Nath Pal* [1875], 23 W. R. 436.

[6] *Taru Patur* v. *Abinash Chunder Dutt* [1878], I. L. R., 4 Cal. 79.

[7] *Ram Chunder Sao* v. *Bunseedhur Naik* [1883], I. L. R., 9 Cal. 741.

in a *jamabandi*, as settled under the said Regulation, binding upon a tenant, there must be either an assent to that enhancement, or else a compliance with the provisions of the rent-law with reference to enhancement of rent in force at the time of such enhancement.[1]

Admissibility of certified copies of survey measurement-chittas, &c.

Certified copies of survey measurement-*chittas*, field-books, and maps are admissible in evidence.[2] Whatever may be the value of *chittas* in general in questions between the *zamindar* and his tenants or *raiyats*, their reception as evidence of boundary against rival proprietors, without further account, introduction, or verification, was *held*[3] to be open to grave objection. But they may be evidence in such cases if proved to be genuine and attested.[4] Where *chittas* were produced by the plaintiff as evidence of certain lands being rent-paying, it was *held*[5] that they were sufficiently attested by the deposition of the village-*gumashta* that he had been present when, with his assistance, the measurement of the lands of the village had been tested. *Chittas* and maps made in contemplation of resumption-proceedings, in the presence of both parties, and signed by the parties, are legal evidence.[6] *Batwara-chittas* are no evidence between *raiyats* in a suit for possession of a *jote*.[7] When a *chitta* describes certain land as a *taluk*, this, in the absence of evidence to the contrary, implies a permanent interest.[8] *Chittas* produced from the Collectorate, when there is nothing to show that they are the record of measurements made by any Government officer, are not public documents.[9] *Chittas* made by the Government for

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[1] *Akhoy Kumar Dutt* v. *Shama Charan Patitanda* [1889], I. L. R., 16 Cal. 586. *See* also *J. P. DeSilva* v. *Raj Coomar Dutt* [1871], 16 W. R. 153.

[2] *Gopeenath Singh* v. *Anundmoyee Debia* [1867], 8 W. R. 167.

[3] *Ekowrie Singh* v. *Heera Lall Seal* [1868], 11 W. R. (P. C.) 2: 2 B. L. R. (P. C.) 4.

[4] *Sudukhina Chowdhrain* v. *Raj Mohan Bose* [1869], 3 B. L. R. (A. C.) 377.

[5] *Debee Pershad Chatterjee* v. *Ram Coomar Ghossal* [1868], 10 W. R. 443.

[6] *Sham Chand Ghosh* v. *Ram Krishto Bewrah* [1873], 19 W. R. 309.

[7] *Gopal Chunder Shaha* v. *Madhub Chunder Shaha* [1873], 21 W. R. 29.

[8] *Krishna Chunder Goopto* v. *Meer Sufdur Ali* [1874], 22 W. R. 326.

[9] *Netyanund Roy* v. *Abdur Raheem* [1881], I. L. R., 7 Cal. 76.

its own use are nothing more than documents prepared for the information and guidance of the Collector, and they are not evidence against private persons for the purpose of proving that the land described in them was or was not of a particular character or tenure.[1] In the case here referred to, the learned Judge said:—

I think it would be extremely dangerous to admit evidence of this kind under the guise of public documents. Such papers are merely prepared by the Government as landlords for the purposes of their estate, and they appear to me to be no more evidence against the tenants of that estate than similar documents would be prepared by any other landlord.

Admissibility of road-cess returns.

Under section 95 of Bengal Act IX. of 1880, road-cess returns are admissible in evidence against the person by or on behalf of whom they have been filed, but are not admissible in his favour. Road-cess papers are not admissible against a tenant, either as substantive or corroborative evidence of the amount of rent payable by him,[2] or against another shareholder.[3] Simple statements made by deceased *ijaradars* in cess-returns filed by them regarding assets of their tenancy are not admissible in evidence against third persons.[4]

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[1] *Ram Chunder Sao* v. *Banseedhur Naik* [1883], I L. R., 9 Cal. 741 (F. B.). *See* also *Junmajoy Mullick* v. *Dwarkanath Mytee* [1879], I. L. R., 5 Cal. 287: (S. C.) 4 C. L. R. 574, where it was *held* that the document was admissible as evidence under section 83 of the Evidence Act. That section says: "The Court shall presume that maps or plans, purporting to be made by the authority of Government, were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate." The learned Judge said: "Now this map does not purport to be made by the authority of Government within the meaning of this section. It was a map prepared by an officer of Government while he was in charge of a *Khas Mahal*, the Government being in possession of that *mahal* merely as a private proprietor. It seems to us clear, therefore, that the document in question does not come within the purview of that section. But we are not prepared to hold, as contended for by the pleader for the appellant, that this map is not admissible in evidence at all. It may be admissible as evidence under section 13 of the Evidence Act. But it is one thing to treat it as mere evidence of possession or of assertion of right under section 13, and it is another thing to presume it to be accurate under section 83 of the Act." *See* also *Dwarka Nath Misser* v. *Tarita Moyi Debia* [1886], I L. R., 14 Cal. 120; *Girindra Chundra Ganguli* v. *Rajendra Nath Chatterjee* [1897], 1 C. W. N. 530. In this case, as in *Dwarkanath Misser* v. *Tarita Moyi Debia*, it was *held* that resumption-*chittas* are not admissible in evidence without the resumption-proceedings.

[2] *Mahomed Mahmood* v. *Safar Ali* [1885], I. L. R., 11 Cal. 407.

[3] *Nuseerun* v. *Gouree Sunkur Singh* [1874], 22 W. R. 192.

[4] *Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri* [1899], I. L. R., 26 Cal. 832.

Any statement, as to rent payable for a holding, made by a person in a sale-certificate, which was obtained by him as purchaser of the holding, at a sale in execution of a decree against the former tenant, being in the nature of an admission, cannot be used as evidence on his behalf, as such a statement does not come within the Exceptions to section 21 of the Evidence Act.[1]

Statements as to rent in sale-certificates.

143. (*1*) The High Court may, from time to time, with the approval of the Governor-General in Council, make rules, consistent with this Act, declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such, or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Code of Civil Procedure in its application to landlord-and-tenant suits.—*Now* Act V. of 1908.

(*2*) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

Now Act V. of 1908.

The policy of section 143 is to regulate the procedure in suits between landlords and tenants, so far as possible, in accordance with the Code of Civil Procedure. But the High Court is vested with the power of making rules, "consistent with this Act," declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such, or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.[2]

Principle

The application of the procedure laid down in the Code of Civil Procedure is also subjected to the other provisions of the present Act.[2] Accordingly, in a suit for rent, the landlord must include in his claim all the rent due at the date of the institution of the action; he cannot split up his cause of action, and sue for

Order II. (2) of the Code of Civil Procedure (Act V. of 1908).

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[1] *Ramani Persad Narain Sing* v. *Mohant Adaiya Gosain* [1903], I. L. R., 31 Cal. 380.

[2] *See* s. 148, *post*. No rules have been framed by the High Court under s. 143.

the rent of one period at one time, and of another period at another time (*see* the Illustration to Order II. (*2*) of the First Schedule of the Code, Act V. of 1908).[1]

In order to create a bar under the Order just cited, the claims in the two suits must be founded on the same cause of action. The dismissal of a suit for rent at an enhanced rate is no bar to a subsequent suit for rent at the rate originally fixed.[2]

Proceedings under Chapter X of the present Act.

Proceedings under Chapter X. of the present Act, although initiated by an application, constitute a suit within the meaning of section 143, and the provisions of the Code of Civil Procedure are, therefore, applicable to them. And the Special Judge, who has heard an appeal under section 108, sub-section (*2*), of the original Chapter X. [=section 109A, sub-section (*2*), of the new Chapter X., *ante*, page 505], is entitled to review his judgment under section 114, together with rule 1 of Order XLVII. of the First Schedule of the Code (Act V. of 1908).[3]

Against whom a suit for rent had to be brought under the old law.

Under the old law, the landlord was only bound to sue his registered tenant for the rent.[4] The cognizance or supposed cognizance by the landlord of the purchase of a tenure was *held*[5] not to be sufficient to cure the defect of non-registration. But,

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[1] *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya* [1881], I. L. R., 6 Cal. 791: (S. C.) 8 C. L. R. 297; *Sheo Shunkur Sahoy* v. *Hridoy Narain* [1882], I. L. R., 9 Cal. 143; *Adhirani Narain Kumari* v. *Raghu Mohapatro* [1885], I. L. R., 12 Cal. 50; *Madan Mohan Lal* v. *Lala Sheo Sanker Sahai* [1885], I. L. R., 12 Cal 482 (P. C.). This principle was also given effect to in *Ahsanulla Khan Bahadur* v. *Tirthabashini* [1895], I. L. R., 22 Cal. 680 (*see* p. 691).

[2] *Suddaruddin Ahmed* v. *Bani Madhub Roy Chowdhury* [1887], I. L. R., 15 Cal. 145, F. B. overruling *Kunnock Chunder Mookerjee* v. *Guru Dass Biswas* [1883], I. L. R., 9 Cal. 919: S. C., 12 C. L. R. 599). *See* also *Khedaroonissa* v. *Boodhee Bibi* [1870], 13 W. R. 317, and *Soora Soonderee Dabea* v. *Golam Alli* [1873], 19 W. R. 142: (S. C.) 15 B. L. R. 125 (note).

[3] *Achha Mian Chowdhry* v. *Durga Churn Law* [1897], I. L. R., 25 Cal. 146: (S. C.) 2 C. W. N. 137.

[4] *Huree Churn Bose* v. *Meharoonissa Bibee* [1867], 7 W. R. 318; *Forbes* v. *Protap Singh Doogur* [1867], 7 W. R. 409; *Sadhun Chander Bose* v. *Gooroo Churn Bose* [1871], 15 W. R. 99; *Suddye Purira* v. *Boistab Purira* [1871], 15 W. R. 261; *Dwarka Nath Mittra* v. *Nobango Monjari Dasi* [1880], 7 C. L. R. 233.

[5] *Sarkies* v. *Kali Kumar Roy* [1864], W. R., Sp. No. (Act X.), 98.

if he recognized a new tenant, by accepting rent from him,[1] or in any other way[2], as by allowing sums paid into the Collectorate to be carried to his credit,[3] he could not resile and sue his old tenant. If a holding had been let to more than one *raiyat*, the *raiyats* must all be sued.[4] The unregistered transferee of a transferable tenure could not be treated by the landlord as a trespasser; and was entitled, as against the landlord who had evicted him, to be restored to possession.[5]

Against whom a suit for rent should be brought under the present law.

Under the present Act, if an occupancy-holding is transferable by custom, and the *raiyat* transfers it without notice to the landlord given in the manner prescribed by the law, he remains liable for arrears of rent accruing due after the transfer.[6] Accordingly, the landlord may sue either the *raiyat* or the transferee, or both, for the whole of such rent.

Contribution between tenants.

Although the landlord is entitled to look to the recorded tenant only for his rent, this does not relieve the unrecorded tenants of their equitable liability to pay their share of the rent to the recorded tenant who has been obliged to pay the whole. Even when one of the unrecorded co-tenants, who was not a party to the suit brought by the landlord, had sold away his interest before the date of suit, and derived no advantage from the payment made, he would be liable for contribution if he was a co-tenant at the time when the liability for the rent arose.[7]

Liability of joint tenants.

A suit for rent against some of several joint tenants is maintainable, as their liability is joint and several.[8]

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[1] *Nobo Coomar Ghose* v. *Krishna Chunder Banerji* [1864], W. R., Sp. No. (Act X.), 112; *Mirtunjoy Sircar* v. *Gopal Chunder Sircar* [1868], 10 W. R. 466: (S. C.) 2 B. L. R. (A. C.) 131; *Bharut Roy* v. *Gunga Narain Mohapattur* [1870], 14 W. R. 211; *Dhunput Singh Roy Bahadoor* v. *Vellayet Ali* [1871], 15 W. R. 211; *Anund Moyee Dossee* v. *Mohendro Narain Doss* [1871], 15 W. R. 264; *Allender* v. *Dwarkanath Roy* [1871], 15 W. R. 320.

[2] *Meah Jan Munshi* v. *Kurruna Mayi Debi* [1871], 8 B. L. R. (A. C.) 1.

[3] *Ram Gobind Roy* v. *Dashoobhojah Debi* [1872], 18 W. R. 195.

[4] *Roop Narain Singh* v. *Juggoo Singh* [1868], 10 W. R 304.

[5] *Nobeen Kishen Mookerjee* v. *Shib Pershad Pattuck* [1876], 8 W. R. 96.

[6] *See* s. 73, *ante*, p. 342, and the cases noted thereunder.

[7] *Gobindo Chunder Chuckerbutty* v. *Basant Kumar Chuckerbutty* [1899], 3 C. W. N. 384

[8] *Jogendro Nath Roy* v. *Nagendra Narain Nandi* [1907], 11 C. W. N. 1026.

Position of transferee acquiring holding from registered tenant after decree for rent.

When a landlord has obtained a decree for rent against his registered tenant, a transferee of the holding who acquired an interest in it after the decree cannot maintain a suit to set aside the decree except on the ground of fraud; nor is he entitled to a refund of the money paid in satisfaction of the decree.[1]

Where registered tenant is a benamidar, landlord entitled to sue real tenant in possession.

Where it is alleged that the tenant whose name is recorded in the *zamindar's serishta* is a mere *benamidar*, the landlord is entitled to sue the real tenants in possession, although no previous realisation of rent directly from them is established, and no written agreement is shown to have been executed by them in their own names, another party being the ostensible holder of the lease, and not denying liability.[2] But he cannot proceed against both.[3] Although this was laid down when the old law was in force, the principle would apply to cases arising under the present Act.

No privity between landlord and sub-tenant.

There is no privity between the landlord and any person holding a subordinate interest in a tenure or holding. Accordingly, such a person cannot be joined in a suit brought for rent against the actual tenant, much less can he be made liable for it.[4] But the landlord may sue a mortgagee in possession for rent.[4]

Zamindar cannot sue principal and agent together.

A *zamindar* cannot, in the same suit, sue both the principal and the agent: he must elect which of them he will proceed against.[5]

Admissions by one co-tenant how far binding against the others.

When two persons are sued for rent as joint tenants, an admission by one of them regarding the correctness of the plaintiff's claim does not bind the other. If they had been

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[1] *Jadu Nandan Tewary* v. *Tribhuban Tewary* [1897], 1. C. W. N. clxiv.

[2] *Jadoonath Paul* v. *Prosunnonath Dutt* [1868], 9 W. R. 71; *Bipeen Beharee Chowdhry* v. *Ram Chander Roy* [1870], 14 W. R. 12: (S. C.) 5 B. L. R. 234; *Ram Taruk Ghose* v. *Biressur Banerjee* [1866], 6 W. R. (Act X) 32; *Jerabutoonissa* v. *Ram Chunder Doss* [1866], 6 W. R. (Act X) 36.

[3] *Kamyah* v *Omda Begum* [1864], W. R., Sp. No. (Act X.), 88; *Heeraloll Bukshee* v. *Raj Kishore Mozoomdar* [1862], W. R., Sp. No. (F B.), 58.

[4] *Macnaghten* v. *Bhikari Singh* [1878], 2 C. L. R. 323; *Pertab Udai Nath Sahi Dev* v. *Pardhan Mokand Singh* [1892], I. L. R., 25 Cal. 899: (S. C.) 2 C. W. N. 96.

[5] *Prosonno Coomar Paul* v. *Koylash Chunder Paul* [1867], 8 W. R. 428.

sued on the allegation that they held the holding jointly, a separate decree for half the amount admitted cannot be made against the tenant who had made the admission.[1] Similarly, an admission by one *raiyat* as regards the rate at which he holds is no evidence against his *co-raiyats*.[2] Nor is the admission of a co-sharer tenant, that a particular person is the landlord of the holding any evidence against the others.[3] But, where one co-tenant is allowed by his co-sharers to hold himself forth as the real holder of the tenancy, and to get his name registered, and the rent-receipts stand in his name, a decree obtained against him binds the others:[4]

Where several persons are jointly interested in the subject-matter of a suit, the general rule is, that the admissions of any one of those persons are receivable against himself and fellows, whether they be all jointly suing or sued, or whether an action be brought in favour of, or against, one or more of them separately: provided the admission relate to the subject-matter in dispute, and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered.[5]

In a suit by a *zamindar* against his lessees for rent, a person, who was one of several *jotedars* in the *mahal*, was called as a witness for the *zamindar*, and admitted the fact that an arrangement existed, whereby he and his *co-jotedars* had agreed to pay rent to the *zamindar* direct. The suit being decided in favour of the *zamindar*, the lessees then brought a suit against the *jotedars*, amongst whom was the witness above mentioned, to recover the sum which the *jotedars* ought to have paid to the *zamindar* direct, and which the *ijaradars* had been decreed to pay. The *jotedars* disclaimed all liability to pay rent to the *ijaradars*: In this suit, the

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[1] *Chundureshwur Narain Pershad* v. *Chu..i Ahir* [1881], 9 C. L. R. 359.
[2] *Norohurry Mohant* v. *Naraini Dassi* [1862], W. R., Sp. No. (F. B.), 23.
[3] *Kali Kishore Chowdhry* v. *Gopi Mohan Roy* [1897], 1 C. W. N cliv.
[4] *Moti Lall Poddar* v. *Nripendra Nath Roy* [1897], 2 C. W. N. 172.
[5] Taylor on Evidence, Vol. I., 9th Edn., para. 743, p. 488: *See* also *Kemble* v. *Farren* [1829], 3 C. & P. 623; *Lucas* v. *De la Cour* [1813], 1 M. & Sel. 249.

evidence given by the *jotedar* in the *zamindar's* action was *held*[1] to be admissible against all the defendants.

Joinder of parties in suit for apportionment or adjustment of rent.

In a suit for apportionment or adjustment of rent, all the parties interested must be joined in the action. A tenant held certain land under a lease which provided that, after the land had been fully brought under cultivation, there should be a measurement, and an adjustment of the rent, finally and once for all; and that, thereafter, there should be no further change in the rent: One of the landlords then brought a suit alleging that the land had been fully brought under cultivation, and that there had been a measurement, and, therefore, he prayed for an adjustment of his share of the rent: It was *held*[2] that, under the terms of the lease, the final adjustment of the rent could be obtained only by a suit brought by all the landlords; or by a suit by some of them if the others refused to join; but that, in the latter case, the suit must be for the adjustment of the entire rent; and all the necessary parties must be properly before the Court.

Separate payment of rent not conclusive evidence of apportionment.

Where a tenant has agreed with his landlords to pay a certain rent for his whole holding, the fact, that he has paid each landlord his proportionate share of the rent, is not conclusive, but is merely presumptive, evidence that the rent has been apportioned between the landlords.[3]

Res judicata. Act V, 1908.

In considering how far a particular issue raised in a rent-suit is *res judicata*, the provisions of section 11 of the Code of Civil Procedure must be kept strictly in view.

Where the Court whose judgment is set up as *res judicata* has not concurrent jurisdiction with the Court trying the subsequent case, the principle of *res judicata* does not apply.[4]

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[1] *Kewsulliah Sunduri Dasi* v. *Mukta Sunduri Dasi* [1885], I. L. R., 11 Cal. 588.

[2] *Bindi Bashni Dasi* v. *Peary Mohun Bose* [1891], I. L. R., 20 Cal. 107.

[3] *Anoo Mundul* v. *Shaikh Kamalooddeen* [1877], 1 C. L. R. 248.

[4] *Raja Run Bahadur Singh* v. *Lachoo Koer* [1884], L. R., 12 I. A. 23.

Res judicata (*contd.*).

A judgment which decided merely questions of rent, and which was pronounced by a Court not having jurisdiction to decide the question of title to the property, cannot be regarded as amounting to *res judicata* in a subsequent suit brought to decide the question of title to that property:[1] Thus, a decision by a Revenue Court, that a *mukurrari patta* was not genuine, or that certain land was not *lakhiraj*, was *held* not to be conclusive in a subsequent suit between the same parties in the Civil Court. But a decision by a Revenue-officer under section 107 would have the force and effect of a decree of a Civil Court in a suit between the parties—*see* notes to that section, *ante*, page 497. If the causes of action in the two suits are different,[2] or if the parties in the subsequent suit are not the same as, or do not claim under, the parties in the previous suit, there is no *res judicata*.[3] The Full Bench have *expressed*[4] themselves thus:—

No doubt in the former suit the matter now in issue was also in issue, and was formally determined; but that suit was not "between the same parties" as this suit, or "between parties under whom the parties in this suit claim." The plaintiff is the landlord of the plaintiff in the former suit, and cannot be barred by the decision of that suit, which was between[5] his tenant, a third party, because he was joined as a defendant with that party. It is sufficient to point out that the conduct of the suit was not in his hands; and, if it had been abandoned by the plaintiff so as to cause it to be dismissed, it could not reasonably be held that this suit was barred.

A decision in a suit for rent, brought by a plaintiff against a person who is alleged to have been his tenant, in respect of

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[1] *Rajah Khetter Kristo Mitter* v. *Kumar Dinendra Narain Roy* [1897], 3 C. W. N. 202. *See* also *Janeswar Dass* v. *Gulsari Lal* [1869], 11 W. R. 216; *Chunder Coomar Mundul* v. *Namni Khanum* [1873], 19 W. R. 322.

[2] *Bhugwan Doss* v. *Sheo Narain Singh* [1875], 23 W. R. 253: a suit for *khas* possession was *held* to be no bar to a later suit for rent of the same lands.

[3] *Shaikh Wahid Ali* v. *Nauth Tooraho* [1875], 24 W. R. 128; *Brojo Behari Mitter* v. *Kedar Nath Mosumdar* [1886], I. L. R., 12 Cal. 580 (F. B.). *See* also *Alimuddin Biswas* v. *Kailuddi Sheikh* [1898], 2 C. W. N. cxlvii.

[4] *Brojo Behari Mitter* v. *Kedar Nath Mosumdar* [1886], I. L. R., 12 Cal. 580 (F. B.).

[5] *Sic.*

Res judicata (contd.).

certain land, does not operate as *res judicata* in a subsequent suit brought by the same plaintiff for establishment of his title to the land, not only against the alleged tenant, but also against the person whose title as landlord the tenant-defendant had set up in the rent-suit.[1] A decree obtained in a previous suit for rent by an *ijaradar* does not operate as *res judicata* against the tenant on the question whether the relationship of landlord and tenant exists in a subsequent suit for rent brought by the superior landlord.[2]

If the question for consideration in the subsequent suit is not the same as that in the previous suit,[3] or if the matter in issue in the former suit has not been heard and finally decided, there is no *res judicata*.[4] Where the plaintiff had sued the defendant for rent of certain lands, &c., and the defendant contended that he was not liable for the entire rent, as part of the land was in the plaintiff's possession, on the defendant's failure to prove his contention, a decree was given for the full amount claimed. Subsequently the plaintiff again sued the defendant, in regard to the same property, for arrears of rent for subsequent years, at the rate claimed in the former suit. The defendant had the land measured, adduced evidence, and endeavoured to raise the same defence that he had raised in the previous suit. No allegation was made to the effect that the rent had been altered in consequence of anything that had happened since the previous decision. The lower Courts, without considering the evidence adduced by the defendant, held that the defendant could not again raise the same contention, as the question had already been considered and determined in the previous suit, and was *res judicata*

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[1] *Dwarka Nath Roy* v. *Ram Chand Aich* [1899], I. L. R., 26 Cal. 428; S. C. 3 C. W. N. 266 (*Gopal Das* v. *Gopi Nath Sircar* [1882], 12 C. L. R. 38, dissented from).

[2] *Balaram Mondul* v. *Kartick Chundar Roy* [1899], 4 C. W. N. 161.

[3] *Gopee Mohun Mozoomdar* v. *Hills* [1878], I. L. R., 3 Cal. 789.

[4] *Brindabun Chunder Sircar* v. *Dhananjoy Luskar* [1879] 4 C. L. R. 443; *Roghu Nath Mondul* v. *Jugutbundhu Bose* [1881], 8 C. L. R. 393.

between the parties: It was, however, *held*[1] by the High Court that the previous decision did not operate as *res judicata*, and that the lower Courts ought to have determined on the evidence adduced what the amount of rent in question was.

Res judicata (*contd.*).

Nor does a previous decision in a suit for rent operate as *res judicata* in a subsequent suit where the amount of rent subsequently accrued due is in issue.[2] But, if the parties are the same, and the self-same title is substantially in issue in both suits, the second suit is barred.[3] There is nothing in section 11 of the Code of Civil Procedure (Act V. of 1908) to indicate that the judgment in the two suits must be open to appeal in the same way in order that the decision upon any issue in the earlier suit may bar the trial of the same issue in the later suit.[4]

When, in a previous suit brought by the predecessor in title of the plaintiff against the defendants for rent, one of the questions raised was, whether the land, in respect of which rent was claimed, was *mál* or *lakhiraj*, and that question was decided in favour of the defendants, and the suit was dismissed, and, in a subsequent suit by the plaintiff against the same defendants for *khas* possession of certain land, the same defence, *viz.*, that the land in dispute was their *lakhiraj* land, was raised, and it was contended that the judgment in the previous suit operated as *res judicata*, it was *held*[5] that,

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[1] *Nilmadhub Sarkar* v. *Brojo Nath Singha* [1893], I. L. R., 21 Cal. 236.

[2] *Jotindra Mohun Tagore* v. *Shumbhu Chunder Bhattacharjee* [1897], 4 C. W. N. 43.

[3] *Mohima Chunder Mojoomdar* v. *Asradha Doss* [1874], 21 W. R. 207: *Gobind Chunder Koondoo* v. *Taruck Chunder Bose* [1877], I. L. R., 3 Cal. 145; (s. c.) 1 C. L. R. 35 (F. B.); *Bemolasoondury Chowdhrain* v. *Punchanan Chowdhry* [1878], I. L. R., 3 Cal. 705. *See* also *Toponidee Dhirj Gir Gosain* v. *Sreeputty Sahanee* [1880], I L. R., 5 Cal. 832.

[4] *Rai Charan Ghose* v. *Kumud Mohun Dutt* [1898], I. L. R., 25 Cal. 571: (s. c.) 2 C. W. N. 297.

[5] *Kasiswar Mukhopadhya* v. *Mohendra Nath Bhandari* [1897], I. L. R., 25 Cal. 136. *See* also *Nubo Doorga Dossee* v. *Fyz Buksh Chowdhry* [1875], I. L. R., 1 Cal. 202: 24 W. R. 403; *Bussun Lal Sukul* v. *Chundi Das* [1879], 4 C. L. R. 1; *Niamut Khan* v. *Phadu Buldia* [1880], I. L. R., 6 Cal. 319: 7 C. L. R. 227; *Kartick Chandra Pal* v. *Sridhar Mandal* [1885], I. L. R., 12 Cal. 563.

Res judicata (contd.).

although the previous suit was one for rent, yet the issue upon the question, whether the land was *mál* or *lakhiraj*, was raised directly in the suit, and, therefore, the subsequent suit was barred:

The Code of Civil Procedure does not define the expression "matter directly and substantially in issue." The only explanation of the expression that is given is in Explanation II. of section 11 of the Code, and that relates to cases where a matter is to be held to have been directly and substantially in issue constructively, though it was not directly and substantially in issue actually. Here there is no question that the matter, was in issue actually, and not merely constructively. The only question is, whether the matter was directly and substantially in issue ..... In the present case there can be no question that the issue now raised was raised *substantially* in the former case ..... Here the matter was not merely in effect, but also in express terms, decided. Then there remains the question whether the matter was directly in issue. The word "directly" seems to have been used in contradistinction to the words "incidentally" and "collaterally" made use of in the statement of the opinion of the Judges in the *Duchess of Kingston's* case.[1]

Without attempting to lay down any hard-and-fast rule for determining when an issue should be considered to have been directly raised and when incidentally or collaterally, we think it enough, for the purposes of the present case, to say that, whatever meaning may be assigned to the term "directly," it is impossible to avoid the conclusion that the issue upon the question of *mál* and *lakhiraj* was raised directly in the former suit, quite as much as it is in this suit.[2]

But, where the question of title in a rent-suit is raised only incidentally, it does not operate as *res judicata* in a subsequent suit on title.[3] How far the fact, that any particular matter in issue in a subsequent suit ought or ought not to have been raised in a previous suit, depends upon the particular circumstances of each case. In some cases the fact, that it had

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[1] 2 Smith's Leading Cases, 11th Edn., p. 731 [1776].

[2] *Kasiswar Mukhopadhya* v. *Mohendra Nath Bhandari* [1897], I. L. R., 25 Cal. 136 (at pp. 139, 140).

[3] *Srihari Banerjee* v. *Khitish Chandra Rai Bahadoor* [1897], I. L. R., 24 Cal. 569; (s. c.) 1 C. W. N. 509.

not been raised, has been regarded as amounting to *res judicata*.[1] In others, it has not been considered to operate as a bar. The tendency of the later decisions is generally in the latter direction. For example, a defendant was held entitled to raise the plea of *benami* notwithstanding that it was not raised in the previous suit.[2]

Res judicata (*contd.*).

When, in a suit for rent, the rent claimed expressly included an item which was objected to as an illegal cess, it was *held*[3] that the mere fact, that, in a previous rent-suit between the same parties regarding the same tenure, the defendant did not raise the same plea, although he could have done so, did not, in the absence of a judicial determination of the point in the previous suit, preclude him from raising the plea in the subsequent suit.

In another case, a somewhat fine distinction has been drawn as to what constitutes *res judicata* and what does not. The plaintiff brought a suit for rent, which was contested, and having failed to prove that the rent was payable at the rate claimed by him, the Court, in trying the issue "what is the amount of the *jama*," after considering the whole of the evidence and the circumstances of the case, *held*[4] that the plaintiff had entirely failed to prove his allegation of the *jama*; and gave him a decree for the amount admitted by the defendant, which was less than that claimed by the plaintiff. In a subsequent action, the plaintiff sued the defendant, in respect of the same holding, for rent for a subsequent year, and he claimed at the same rate that he had claimed in his previous

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[1] *Dinomoyi Dabia Chowdhrain* v. *Anungo Moyi* [1879], 4 C. L. R. 599; *Ghursobhit Ahir* v. *Ram Dut Singh* [1880], I. L. R., 5 Cal. 923: (s. c.) 6 C. L. R. 537; *Bhairab Dyal Sahoo* v. *Sohodeb Poddar* [1897], 1 C. W. N. cci.

[2] *Kailash Mondul* v. *Baroda Sundari Dasi* [1897], I. L. R., 24 Cal. 711: (s. c.) 1 C. W. N. 565.

[3] *Woomesh Chandra Maitra* v. *Baroda Das Maitra* [1900], I. L. R., 28 Cal. 17. *See* also *Punnoo Singh* v. *Nirghin Singh* [1881], I. L. R., 7 Cal. 298: (s. c.) 8 C. L R. 310; *Jeo Lal Singh* v. *Surfun* [1882], 11 C. L. R. 483, which, at first sight, seems in conflict with *Punnoo Singh* v. *Nirghin Singh*, has been explained in *Hurry Behari Bhagat* v. *Pargun Ahir* [1890], I. L. R., 19 Cal. 656.

[4] *Hurri Behari Bhagat* v. *Pargun Ahir* [1890], I. L. R., 19 Cal. 656.

Res judicata (contd.).

suit. It was contended on behalf of the defendant that the question as to the rate at which the rent was payable was *res judicata*, it not being alleged that there had been any agreement, subsequent to the first suit, by which the rate was altered: It was *held* that the question as to the rent payable for the period covered by the first suit was *res judicata;* but that it did not follow that the decree in that suit operated as *res judicata*, and conclusively determined the rate of the rent payable for the year in respect of which the subsequent suit was brought. That depended on whether the previous decision was (*a*) that the plaintiff should recover from the defendant the sum admitted by him to be due; or (*b*) that the sum so admitted to be due was the proper amount of rent payable for the period in question.

When, in a rent-suit, a Judge tries the question, and gives judgment on the question, "what is the yearly rent," and makes that the foundation of his judgment that becomes *res judicata* between the parties.[1] A decision in a suit where the rate of rent is not in issue does not operate as *res judicata* as regards the rate in a subsequent suit.[2]

Previous decrees for cesses at a certain rate obtained by a landlord against a tenant do not operate as *res judicata* in a subsequent suit for cesses claimed at a higher rate, although they are admissible as evidence in the suit, and may raise a presumption in favour of the tenant.[3] Nor is a tenant, who had not objected in a previous suit to the recovery of an illegal cess, debarred from raising the same plea in a subsequent suit.[4]

In one case it appeared that, in a suit brought by the *zamindar* for rent, the *raiyats* had alleged that the amount of

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[1] *Bakhshi* v. *Nisamuddi* [1892], I. L. R., 20 Cal. 505. *See* also *Bhuban Mohan Sen* v. *Durga Nanda Das Gupta* [1898], 2 C. W. N. cccili.

[2] *Balaram Mondul* v. *Kartick Chandra Roy* [1899] 4 C. W. N. 161.

[3] *Ricketts* v. *Rameswar Malia* [1900], I. L. R., 28 Cal. 109.

[4] *Woomesh Chandra Maitra* v *Baroda Das Maitra* [1900], I. L. R., 28 Cal. 17.

Res judicata (contd.).

rent and the extent of land had been overstated by the plaintiff; but the Court had decided that the defendants were bound by a *jamabandi* signed by them, and refused to try the question whether the extent of land had been overstated. In a subsequent suit by the *raiyats* against the *zamindar*, praying for measurement of certain lands, and for a declaration of their yearly rental, the plea of *res judicata* was raised on the basis of the former action; and it was *held* that the suit was not barred as *res judicata*.

Similarly, where, in a suit for rent, the contention of the defendant was that he was not liable for the entire rent, as part of his land was in the plaintiff's possession, the Court raised no issues on the point, nor was any measurement made of the land; and, the defendant failing to prove his allegation, the suit was decreed. In a subsequent suit for arrears rent of subsequent years, the defendant had the land measured, adduced evidence, and endeavoured to raise the same defence as before; and it was *held*[2] that the matter was not *res judicata*, as, in the previous suit, the Court had not definitely determined the area of the land in the defendant's possession and the annual rent payable for the same.

It would be different when, in a suit for a year's rent, the defendant claims abatement, and the Court determines the amount to be abated, on materials which would be applicable to one year as well as another. The question of abatement must be treated as determined between the parties, not only for the year the rent of which was in suit, but for all future years.[3]

Where an issue was framed on the basis of the defendant's contention, and decided against him, the same question cannot be raised in a subsequent suit.[4]

A question between landlord and tenant, heard and decided by a Revenue-officer under section 106 (*ante*, page 490), will

[1] *Raghoonath Mundul* v. *Juggut Bundhoo Bose* [1881], I. L. R., 7 Cal. 214: (s. c.) 8 C. L. R. 391.

[2] *Nil Madhub Sarkar* v *Brojo Nath Singha* [1893], I. L. R., 21 Cal. 236.

[3] *Nubo Doorga Dossee* v. *Fys Bukh Chowdhry* [1875], 24 W. R. 403: (s c.) I. L. R., 1 Cal 202.

[4] *Bussun Lall Shookul* v. *Chundee Dass* [1879], I. L. R., 4 Cal. 686.

Res judicata (contd.).

operate as *res judicata* between the same parties in a subsequent suit brought to try the same question.[1] So also, by section 107 (*1*), all decisions in proceedings under section 105, 105A, and 106 have the force and effect of a decree of a Civil Court. Where it is necessary to determine the status of the tenants in order to decide what is a fair and equitable rent, that question, as also the question relating to fair and equitable rent having been decided, will be *res judicata* between the parties.[2]

The words "objection" and "dispute" in sections 105 (now section 103A) and 106 are not synonymous: and, accordingly, it has been *held*[3] that an order of a Settlement Officer disposing of an objection under section 105 (now section 103A) has not the effect of *res judicata*, precluding the parties from questioning in the Civil Court the correctness of the entries to which objections were taken before that officer.

In one case, where the plaintiffs initiated proceedings under section 106 against the landlord and certain other defendants who claimed to be rival tenants of the land, to have their names recorded as tenants in the settlement-proceedings, and it was held by the Settlement Officer that the plaintiffs were the tenants, the landlord did not appeal against the order, but the other defendants preferred an appeal to the Special Judge, who reversed the Settlement Officer's decision. The plaintiffs then sued in the Civil Court for a declaratory decree of their rights as tenants with a right of occupancy. It was *ruled*[5] that the Special Judge's decision did not operate as *res judicata*, as it merely decided the question as between tenant and tenant.

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[1] *Gokhul Sahu* v. *Jodu Nundun Roy* [1890], I. L. R., 17 Cal 721; *Joypal Dhobi* v. *Palukdhari Das* [1898], 2 C. W. N. 491. These cases were followed in *Ram Autar Singh* v. *Sanoman Singh* [1899], I. L. R., 27 Cal. 167, where it was *held* that an order made by a Revenue officer, determining the rent payable for a holding, has the force of a decree, and, when not set aside on appeal or otherwise, cannot be questioned by a Civil Court.

[2] *Durga Charan Laha* v. *Hatem Mandul* [1901]. 5 C. W. N. clv. (*The Secretary of State* v. *Nitye Singh* [1893], I. L. R., 21 Cal. 38, distinguished.)

[3] *Secretary of State* v. *Kajimuddy* [1895], I. L. R., 23 Cal. 257. (This was decided before the Amending Act of 1898.)

[4] *Mohunt Jaggannath Ramanuj Das* v. *Chandra Kumar Bose* [1900], 5 C. W. N. 421.

Res judicata (concld.).

The mere statement of an alleged rate of rent, in the plaint in a rent-suit, in which an *ex-parte* decree is made, is not a statement as to which it must be held that an issue, within the meaning of section 11 of the Code of Civil Procedure, was raised between the parties, so that the defendant shall be concluded by the decree. Nor would a recital in the decree of the rate alleged by the plaintiff, or a declaration in it as to the rate of rent which the Court considers to be proved, operate in such a case, so as to make that matter *res judicata*, assuming, of course, that no such declaration were asked for in the plaint as part of the substantive relief claimed, the defendant having a proper opportunity of meeting the case.[1] An *ex-parte* decree for arrears of rent, which has been duly executed, is some evidence as to the rate of rent;[2] whereas one which has never been executed is no evidence as to the rate of rent.[3]

A decree by a co-sharer landlord is not admissible as evidence as to the rate of rent in a suit brought by another co-sharer.[4]

Set-off.

Rule 6 of Order VIII. of the present Code of Civil Procedure, Act V. of 1908 (corresponding to section 111 of the old Code, Act XIV. of 1882), First Schedule, provides as follows:—

Where, in a suit for the recovery of money, the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff (not exceeding the pecuniary limits of the jurisdiction of the Court), and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off.

The written statement shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both of the original claim and of the set-off: but this shall not affect

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[1] *Modhusudun Shaha Mundul* v. *Brae* [1889], I. L. R., 16 Cal. 300 (F. B.), where all the old cases are collected and discussed.

[2] *Madhu Munjari Chowdhurani* v. *Jhumar Bibi* [1894], 1 C. W. N. 120; *Mati Lal Poddar* v. *Nripendra Nath Roy* [1897], 2 C. W. N. 172.

[3] *Ram Chandra Dutt* v. *Haro Gobinda Bhattacharja* [1897], 1 C. W. N. cxxviii.

[4] *Abdul Ali* v. *Raj Chandra Dass* [1906], 10 C. W. N. 1084.

Set-off (*contd.*).

the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Under the old law, a tenant could claim a set-off in a suit for arrears of rent on the ground that the land had become deteriorated or had diminished in area.[1] Probably, under the present law also, he can do so without bringing a suit for a reduction or abatement of the rent under section 38 (*ante*, page 210) or section 52 (*ante*, page 265). It has been ruled[2] that, in a suit for arrears of rents, the plea, that possession of a certain portion of the lands of the tenancy was never given to him, may be raised by the tenant without bringing a formal suit under section 38 or 52.

Set-off.—Rule 6, Order VIII., First Schedule, Act V., 1908.

Although the provisions of this rule of the Code of Civil Procedure admit only an ascertained sum being set off against the plaintiff's claim in a suit for the recovery of money, they do not take away from parties any right to set-off, legal or equitable, which they would have independently of that Code.[3] When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under the rule just quoted of the Code of Civil Procedure.[4]

Act V, 1908.

To admit of a set-off, there must be such a connection between the claim and the counter-claim that the truth and completeness of the one cannot be judged of or measured without reference to, and a consideration of, the other. A *darpatnidar* is entitled to set-off against the *patni* rent sums paid by him to save the *patni* from sale under Regulation VIII. of 1819.[5]

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[1] *Deen Dyal Lal* v. *Thukroo Koonwar* [1866], 6 W. R (Act X) 24.

[2] *Siba Kumari Debi* v. *Biprodas Pal Chowdhry* 1908, 12 C. W. N. 767.

[3] *Bhagbat Panda* v *Bamdeb Panday* [1885], I. L. R., 11 Cal. 557; *Clark* v. *Ruthnavaloo Chetti* [1865], 2 Mad H. C. 296; *Kishorchand Champa Lal* v. *Madhowji Visram* [1880], I L. R., 4 Bom. 407.

[4] *Chisholm* v *Gopal Chunder Surma* [1889], I. L. R, 16 Cal. 711. *See* also *Watson & Co* v *Brojo Soonduree Debia* [1871], 16 W R. 225.

[5] *Nobo Gopal Sircar* v. *Srinath Bundopadhya* [1882], I L. R., 8 Cal. 877; *Lalit Mohun Shaha* v. *Srinibas Sen* [1886], I. L. R, 13 Cal 331. *See* also, on the subject of set-off, *Rookminy Bullub Roy* v. *Mulka Jamania Begum* [1883], I. L. R., 9 Cal. 914 (s. c.) 12 C. L. R. 534.

Where there is no such connection between the claim of the plaintiff and the counter-claim of the defendant, it was *held*[1] that the defendant was not entitled, as a matter of equity apart from legistative enactment, to a set-off. But an allegation of payment must not be confounded with a plea of set-off.[2] Set-off (*concld.*).

144. (*1*) The cause of action, in all suits between landlord and tenant as such, shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. Jurisdiction in proceedings under Act. *Now* Act V., 1908.

(*2*) When, under this Act, a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Cf. section 35 of Bengal Act VIII. of 1869. Reference.

Section 144 of the present Act provides that, for the institution of a suit between a landlord and tenant, the cause of action shall be deemed, for the purposes of the Code of Civil Procedure, to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. And the same provision applies to applications. Section 144 thus brings the Principle.

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[1] *Hossena Bebee* v. *Smith* [1874], 22 W. R. 15: 13 B. L. R. 440.
[2] *Koonjo Behary Singh* v. *Nilmoney Singh* [1879], 4 C. L. R. 296.

New Act V., 1908.

law relating to venue into line with the provisions of the Code of Civil Procedure.

Suit for rent of fishery.

A suit for the rent of a *julkur* or fishery would be brought in the Court which would have jurisdiction to entertain a suit for the possession of the fishery.[1] *See* section 193, *post.*

Suit to be brought in lowest Court.

This section is controlled by sections 15 and 20 of the Code of Civil Procedure (Act V. of 1908). Consequently a suit for rent must be instituted, subject to pecuniary limitations, in the Court of the lowest grade competent to try it.[2]

Action for recovery of excess payment.

An action, under the provisions of section 75 (*ante*, page 356), for the recovery of an excess payment made by the plaintiff to the defendant landlord in respect of his holding under the latter, is a suit between a landlord and tenant within the meaning of section 144, and is cognizable by the ordinary Civil Court as distinguished from the Court of Small Causes. Section 144 only determines the venue; it has no bearing on the question of the nature of the suit, as it merely indicates the jurisdiction within which suits are to be instituted, but does not override the provisions of the Code of Civil Procedure. Therefore, where the suit involves a sum below Rs. 500, there would be no second appeal under section 102 of the Code (Act V. of 1908).[3]

Act V., 1908

Bar to second appeal.

Court fee —Act VII., 1870.

Clause xi. of section 7 of the Court Fees Act gives the rule for determining how the amount of court-fee payable in suits between landlords and tenants should be computed.

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[1] *Shibu Halder* v. *Gopi Sundari Dasi* [1897], 1 C. W. N. lxxxvii.

[2] *Faslur Rahim Abu Ahmed* v. *Dwarka Nath Chowdhry* [1903], I. L. R., 30 Cal. 453.

[3] *Rango Roy* alias *Rung Lal Roy* v. *Holloway* [1899], I. L. R., 26 Cal. 842 : (s. c.) 4 C. W. N. 95.

A suit brought by an assignee of a landlord for recovery of arrears assigned after they fell due is a "suit for the recovery of rent," and therefore excepted from the cognizance of the Court of Small Causes.[1]

Suits excepted from jurisdiction of Court of Small Causes.

Suits for recovery of rent other than house-rent are excluded from the jurisdiction of the Small Cause Court. That Court has, therefore, now no jurisdiction to entertain a suit for arrears of rent of homestead or *bastu* land.[2] (*See* article 8, Schedule II. of Act IX. of 1887.) But it has been *held*[3] that, where the system of settlement known as *burga* prevails, suits for arrears of produce alleged to be due by a *burgadar* are triable by a Small Cause Court.

145. Every *naib* or *gumashta* of a landlord, empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or gumashtas to be recognized agents.

Now Act V. of 1908.

Section 145 must be read with rules 1 and 2 of Order III. of the First Schedule of Act V. of 1908 (the present Code of Civil Procedure), and with section 187 (*1*), *post*.

References.

Section 145 does away with the necessity of the landlord himself instituting the suit or making the application even if he happens to reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Principle.

A suit for arrears of rent, brought by one person on behalf of another, cannot be maintained unless the authority of the

Authority of agent must be established.

[1] *Srish Chunder Bose* v. *Nachim Kasi* [1900], I. L. R., 27 Cal. 827 : (s. c.) 4 C. W. N. 357, F. B. (BANERJEE, *J.*, dissenting).
[2] *Uma Churn Mandal* v. *Bijari Bewah* [1887], I. L. R., 15 Cal. 174.
[3] *Kader Mandal* v. *Ahadali Molla* [1910], 14 C. W. N. 629.

agent is established. Where that is not proved, the action must fail.[1] "A Court, whose aid is invoked on behalf of one person through the agency of another, is entitled, in some form or other, to inquire whether the alleged agent really had authority to bring the suit."[2]

Liability of agent to principal.

A principal must sue his agent within six years under article 116 of Schedule I. of the Limitation Act (IX. of 1908) for accounts, or within three years under article 115 if the agent was not appointed by a registered contract.[3]

Agent to act in name of principal.

Where a suit is brought, or an application is made, or any other act is done, by an agent, it must be in the name of the principal, and on his behalf.[4] A recognized agent cannot institute or defend a suit, or appear in his own name.[5] A *gumashta* or *naib* is like any other agent, and he has no right to bring a suit in his own name,[6] or grant leases or *pattas*[7] or consent[8] to the transfer of a holding.

Stamp-duty.

The written authority referred to in section 145 must be stamped as a power-of-attorney under article 48, Schedule I. of the Indian Stamp Act, 1899 (II. of 1899). For the purposes of the Stamp Act, more persons than one, when belonging to the same firm, are to be deemed to be one person.[9] The Calcutta High Court has *held*[10] that, when an instrument contains a several

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[1] *Nam Narain Singh* v. *Roghu Nath Sahai* [1892], I. L. R., 19 Cal. 678 (P. C.).

[2] *Ibid*, at p. 681.

[3] *Motilal Basu* v. *Amin Chand*, 1 C. L. J. 211.

[4] *Mothoo Soodun Singh* v. *Moran & Co.* [1869], 11 W. R. 43

[5] *Mokha Harakraj Joshi* v. *Bissesswar Dass* [1870], 5 B. L. R. (App.) 111 (s. c.) 13 W. R. 344.

[6] *Koonjo Behary Roy* v. *Poorno Chunder Chatterjee* [1882], I. L. R., 9 Cal. 4: (s. c.) 12 C. L. R. 55.

[7] As to the power of a *naib* to grant leases, see *Goluckmonee Dabea* v. *Asimoodeen* [1864] 1 W. R. 56; *Ooma Tara Debia* v. *Peena Bibee* [1865], 2 W. R. 155; *Punchanan Bose* v. *Peary Mohun Deb* [1865], 2 W. R. 225; *Kalee Coomar Doss* v. *Sheikh Anees* [1865], 3 W. R. (Act X.) 1; *Unnoda Pershad Banerjee* v. *Chunder Sekhar Deb* [1867], 7 W. R. 394; *Ubilack Rai* v. *Dalbial Rai* [1878], I. L. R., 3 Cal. 557.

[8] *Bhojhari Banik* v. *Aka Ghulam Ali*, 16 W. R. 97.

[9] *Explanation* to art. 48, Sch. I., Act II. of 1899.

[10] *In the Matter of Joy Kissen Mookerjee*, No. 1504 of 1885, decided 10th December 1885 (*see* Board's Circular No. 8, Dec. 1885, p. 108).

power-of-attorney conferred by two or more persons, it requires a separate stamp for each power.

146. The particulars referred to in section 58* of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register, to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Special register of suits.

* *Now* O. VII. (First Schedule), r. 9, Act V., 1908.

Instead of 'section 58' should now be understood rule 9 of Order VII., and Order IV., rule 2, of the First Schedule of Act V. of 1908.—*See* section 158 of that Act.

The Local Government directed that the special register to be kept by each Civil Court, under the provisions of this section, should be in the form prescribed by section 58, Act XIV. of 1882, and numbered as 116 in the 4th Schedule annexed to that Act.[1] No new form has been prescribed since Act V. of 1908 superseded Act XIV. of 1882.

Form of register.

147. Subject to the provisions of section 373* of the Code of Civil Procedure, where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits.

* *Now* O. XXIII. (First Schedule) r. 1, Act V., 1908.

For section 373 should now be understood Order XXIII., rule 1, of the First Schedule of Act V. of 1908, which provides for the withdrawal of suits, with leave of the Court, and with liberty

[1] Notification dated the 20th February 1886 published in the *Calcutta Gazette* of 3rd March 1886, Pt. I., p. 142.

to bring a fresh suit for the subject-matter of the action which is withdrawn—in other words, on the same cause of action.

Object of section 147.

This section was introduced into the Act with the object of preventing *raiyats* from being harassed by successive suits for arrears when, by agreement or custom, a larger number of instalments than four may be established. The principle which the section embodies was enunciated under the old law.[1]

Bengal Act I., 1907, only: Compromise of suits between landlord and tenant.

* *Now* O. XXIII., r. 3 (First Schedule), Act V., 1908.

[147A. (*1*) The provisions of section 375* of the Code of Civil Procedure shall not apply to any suit between landlord and tenant as such.

(*2*) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise, or satisfaction, so far as it relates to the suit:

Provided that no decree shall be passed in accordance with any agreement or compromise, the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(*3*) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence

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[1] *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya* [1881], I. L. R., 6 Cal. 791: (s. c.) 8 C. L. R. 297.

as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(*4*) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.

A, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy-*raiyat*; this affects the rights of the tenants of *B*. The Court must, under sub-section (*4*), inquire whether *B* is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that *B* is a *raiyat*, it may pass a decree in accordance with the agreement, but shall not do so if it finds that *B* is a tenure-holder.

(*5*) A decree passed in accordance with any lawful agreement, compromise, or satisfaction shall be final, so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise, or satisfaction.]

[147A. Notwithstanding anything contained in section 373* of the Code of Civil Procedure, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

E. B. Assam Act I., 1908, only: Compromise of suits between landlord and tenant.

* *New* O. XXIII., r. 1 (First Schedule), Act V., 1908.

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any,

agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable, and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.]

For sections 375 and 373, understand now Order XXIII. (*3*) and (*1*), respectively, of the First Schedule of Act V. of 1908. —*See* section 158, Act V. of 1908.

This section (147A) is new. The object of it is to prevent Civil Courts from ratifying compromises that are illegal and inequitable, more especially such as bind the tenant to accept enhancements contrary to the provisions of section 29. It is notorious[1] that tenants have often been compelled to agree to illegal contracts outside a Court. This section obliges Civil Courts to scrutinize compromises, and to reject them if they embody illegal conditions. *See* also notes on sections 29 (page 175, *supra*) and 109B (page 509, *supra*).

Regard to be had by Civil Courts to entries in record-of-rights.—Bengal Act I., 1907; E. B. Assam Act I, 1908.

[147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (*2*) of section 103A, a Civil Court shall, in all suits between landlord and tenants as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.]

Compare the notes on section 103B (page 455, *supra*). As it appeared, even after the passing of Act I. (B. C.) of 1907, that many Civil Courts were ignorant of or ignored the provisions of

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[1] *See* 'Darbhanga Final Report' by J. H. Kerr, I. C. S., pp. 54, 56, 70 to 74 (in particular, para. 261, p. 143; paras. 511, 512, and para. 14 of the Government Resolution thereon).

sections 147A, 147B, 148 (*b1*) and (*b2*) of this Act, the High Court issued a General Letter (No. 9 dated December 7th, 1908) to all District Judges inviting their attention to these sections, and instructing them to see that these amendments were understood and given effect to by the subordinate Courts, and to notice the matter in their Annual Reports on the Administration of Civil Justice.

All Settlement Officers have been instructed[1] to give formal intimation to District Judges of the progress of settlements in their areas.

148. The following rules shall apply to suits for the recovery of rent :— **Procedure in rent-suits.**

(*a*) sections 121[2] to 127[2] (both inclusive), 129,[2] 305,[2] and 320[2] to 326[2] (both inclusive) of the Code of Civil Procedure shall not apply to any such suit : **Act XIV. of 1882.**

(*b*) the plaint shall contain, in addition to the particulars specified in section 50* of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification : *** *Now* O. VII. (1), (2), (4), (5), and 6) of the First Schedule of Act V., 1908.**

[(*b1*) where the suit is for the rent of land situated within an area for which a record-of-rights has been prepared and finally published, the plaint shall further contain a list of the **Bengal Act I., 1907, only.**

[1] Circular No. 3068 of October 28th, 1908, from Director of Land Records.

[2] The corresponding references under the new Code (Act V. of 1908) are rr. 1 (*cf.* r. 2 of O. XLVIII.), 3, 5, 6, 8, and 11 to 13 (both inclusive) of O. XI., r. 83 of O. XXI., and ss 68 & 70 to 72 (both inclusive) of Act V. of 1908, together with the Third Schedule.

survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record-of-rights unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and, in any other case in which it sees fit, the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy.]

E. B. Assam Act I., 1908, only.

[(*bi*) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and, in any other case in which it sees fit, the Court may, require the Collector to supply, without

payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy:

Provided also that such statement, when contained in the plaint, shall be deemed to be a description of the land sufficient for identification within the meaning of clause (*b*).]

[(*b2*) where an alteration has been made in the area of the tenancy since the record-of-rights was prepared and finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed:] Bengal Act I., 1907; E. B. Assam Act I., 1908.

(*c*) the summons shall be for the final disposal of the suit unless the Court is of opinion that the summons should be for the settlement of issues only:

(*d*) the service of the summons may, if the High Court, by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant, and registered under Part III.* of the Indian Post Office Act, 1866;[1]

* *New* Chapter VI. of Act VI. of 1898.

[1] Act XIV. of 1866 has been repealed. *Now read* "Chapter VI. of the Indian Post Office Act, 1898."—*See* Act VI. of 1898, s. 76, and Act X. of 1897, s. 8.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served:

(*e*) a written statement shall not be filed without the leave of the Court:

(*f*) the rules for recording the evidence of witnesses prescribed by section 189* of the Code of Civil Procedure shall apply, whether an appeal is allowed or not:

* *New read* Order XVIII. (13) of the First Schedule of Act V., 1908.

Bengal Act I., 1907, only.

[(*ff*) when any account-books, rent-rolls, collection-papers, measurement-papers, or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies and extracts so certified may be admitted in evidence in any other suit instituted in the same or any other Court unless the Court before which they are produced sees fit to require the production of the originals:]

E. B. Assam Act I., 1908, only.

[(*ff*) when any account-books, rent-rolls, collection-papers, measurement-papers, maps, or extracts from records-of-rights have

been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals which may then be returned to the landlord;

and thereafter copies and extracts so certified may be admitted in evidence in any other suit instituted in the same or any other Court unless the Court before which they are produced sees fit to require the production of the originals:]

(*g*) the Court may, when passing the decree, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejectment for arrears:

(*h*) notwithstanding anything contained in section 232* of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

* *Now* Order XXI. (First Schedule), rule 16, Act V. of 1908.

The rules of procedure laid down in section 148 apply to suits for the *recovery of rent*. And, as expeditious disposal is desirable in such cases, the provisions in the Code of Civil Proce- Principle. Act V., 1908.

dure relating to the administration of interrogatories, and to discovery of documents, are excluded.[1]

As the Bengal Tenancy Act contains independent rules for the satisfaction of a rent-decree, rule 83 of Order XXI. of the Code is excluded; whilst the provisions of sections 68 to 72 are wholly inapplicable under the present Act.

Act V., 1908.

Save and except the provisions especially declared not to apply to suits for recovery of rent, and subject to any rules made by the High Court, the procedure in such suits, including proceedings in execution, is regulated by the Code (now Act V. of 1908).

Application of section 244 of the old Code of Civil Procedure under former Tenancy Acts.

Section 34 of Bengal Act VIII. of 1869 provided that suits under that Act, and all proceedings therein, were to be regulated by the Code of Civil Procedure. Accordingly, in a suit brought to set aside the sale of a *jote* held in execution of an *ex-parte* decree for arrears of rent obtained by the defendants, at which they themselves had purchased the holding, the plaintiff charging that the sale was brought about by fraud on the part of the defendants, it was *held*[2] that the case fell under section 244 of the Code of Civil Procedure, and that a separate suit would not lie.

But section 244 of the Code of Civil Procedure was not applicable to a suit brought under the provisions of Act X. of 1859.[3]

Section 148, clause (*b*).

Clause (*b*) of the present section provides that, in addition to the particulars specified in rules 1, 2, & 4 to 6 of Order VII. (First Schedule) of the Code of Civil Procedure a plaint should contain "a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identi-

Act V., 1908.

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[1] Rr. 1 (*cf.* r. 2 of O. XLVIII.), 3, 5, 6, 8, and 11 of O. XI. of the Code of Civil Procedure (Act V. of 1908) relate to the examination of parties by interrogatories; rr. 12 and 13 of O. XI. relates to dicovery.

[2] *Saroda Churn Chuckerbutty* v. *Mahomed Isuf Meah* [1885], I. L. R., 11 Cal. 376. A separate suit would not lie under s. 244 where the fraud was on the part of the decree-holder.—See *Mohendro Narain Chaturaj* v. *Gopal Mondul* [1890], I. L. R., 17 Cal. 769.

[3] *Brojo Gopal Sarkar* v. *Bussirunnissa Bibi* [1887], I. L. R., 15 Cal. 179.

fication." Rule 3 of Order VII. of Act V. of 1908 (First Schedule) makes it imperative to give the boundaries or survey numbers where this is possible.

Sect n 148 (b) —contd.

In a suit[1] brought by the plaintiff to recover rent from the defendants in respect of certain lands alleged to be in their occupation, the tenants denied holding the said lands at the rent alleged by the landlord, but admitted occupying other lands at different rents. It was *held* that the proper issue to try, having regard to the provisions of clause (*b*), was, whether the defendants occupied the lands mentioned in the plaint, and were liable to pay the rent claimed by the plaintiff on account of those lands. Where the Court failed to try this issue, the case was remanded for adjudication thereon.[1]

But there is no provision authorizing the dismissal of the suit on the ground that the lands mentioned in the plaint cannot be identified. If the statement is not sufficient for identification, the proper procedure is to return the plaint for amendment under section 53 of the former Code (Act XIV. of 1882). In case of the plaintiff's failure to do so, it may be dealt with under section 54.[2] [The corresponding references to the present Code (Act V. of 1908) are rule 17 (*cf.* rule 11 of Order VII.) and rule 18, respectively, of Order VI. (First Schedule).]

But this can be done only in the Court of first instance. Where the plaintiff has obtained a decree in the first Court, in the absence of any plea that the lands were not capable of identification, the Lower Appellate Court would not be justified in dismissing the suit merely on that ground; and the case must be tried on its merits, and the Judge can have "a proper map of the disputed property drawn up," which would be made a part of the decree.[2]

In another case[3] the learned Judges said as follows:—

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[1] *Bhai Chal Nasya* v. *Shaik Shamnuy isi Mahamed* [1894], 1 C. W. N. 152.

[2] *Kasem Sheik* v. *Danesh Sheik* [1897], 1 C. W. N. 574. This was the pecision of a single Judge (RAMPINI, *J.*).

[3] *Rash bhary Gope* v. *Kh ibon Singh* [1897], I. L. R., 24 Cal. 433.

Section 148 (b) —*contd.*

From section 148, clause (*b*), of the Bengal Tenancy Act, it would seem to be necessary that, in a suit for the recovery of rent, the land in respect of which that rent is payable should be clearly defined. The case must go back to the District Judge in order that he may try the appeal according to law. What he has to consider in the case is, whether the plaintiff has, upon the evidence on the record, proved the allegation made in his plaint, that is to say, that the defendant holds the land specified in the two schedules annexed to the plaint.

In a later case,[1] the view expressed above has been limited to circumstances where there is "a real necessity for the determination of the extent and boundaries of the defendants, holding." "No doubt it is true," said the learned Judge,—

"that clause (*b*) of section 148 of the Bengal Tenancy Act requires that the plaint should ordinarily give a statement of the extent and boundaries of the land held by the defendant; but clause (*b*) further provides 'or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification.' That indicates that it is not absolutely necessary for the plaintiff to give the extent and boundaries of the lands in respect of which rent is claimed where there is any difficulty in giving those particulars; and that, in such cases, it would be enough if, in lieu of giving the extent or boundaries of the land, a description sufficient for identification is given. It cannot, therefore, be said that the Court is bound in every suit for arrears of rent to determine the extent and boundaries of the defendant's holding or tenure.

The provisions of clause (*b*), it is submitted, are imperative, and rule 3 of Order VII. of Act V., 1908 (First Schedule), is to the same effect also; it is only where the plaintiff is unable to give the extent or boundaries that he is permitted to give a description sufficient for identification. The ruling referred to above gives no clear indication when and under what circumstances the particulars required under section 148 (*b*) may be dispensed with. The necessity for these particulars does not depend upon the allegations of the defendant; the law requires them to be stated independently of the objection of

[1] *Pijruddi Naskar* v. *Ambika Churn Mitter* [1900], 5 C. W. N. 121.

the tenant, and it is obvious that, unless the land in respect of which rent is claimed is fully and adequately identified, execution-proceedings resulting in sale of a tenancy might easily prove quite infructuous. Section 148 (b) —concld.

Clause (c) indicates that, ordinarily, a suit for the recovery of rent should be disposed of at the first hearing. And it provides that the summons to the defendant shall be for the final disposal of the suit unless the Court be of opinion that it should be for the settlement of issues only. That must depend upon the circumstances of the case, so far as they appear in the plaint. Ordinarily, it is difficult to predicate, from merely the plaint, whether issues should be framed or not; the need for raising issues can be perceived only after the defendant has filed his written statement [*see* note to clause (*e*), *infra*]. But the Legislature, by this clause, after declaring that, in rent-suits, the summons should ordinarily be for final disposal, has left it to the discretion of the Judge to make it for settlement of issues only.[1] Clause (c).

Clause (*d*) provides for the service of summons by post "if the High Court by rule, either generally, or specially for any local area, so directs." No rule has been framed by the High Court for the purpose. Clause (d): rules.

In order that the presumption of due service may arise, the letter must be, not only posted, but also registered.[2] Under clause (*f*) of section 114 of the Indian Evidence Act (I. of 1872), there is a presumption that "the common course of business has been followed in particular cases." And, accordingly, it has been *held*[3] that, unless the course of business has been interrupted by disturbances, when a letter has been posted, it must Clause (d): registration.

[1] Under the Circular Orders of the High Court, 1891, p. 53, cl. (*d*), a suit for arrears of rent cannot be called on and tried *ex parte* unless the summons has been served at least fourteen clear days before the day of hearing.

[2] The Post Office Act, XIV. of 1866, has been repealed and re-enacted by the Indian Post Office Act, 1898, and the registration of letters is now regulated by Chapter VI. of the latter Act.

[3] *See* Ameer Ali and Woodroffe's Commentary on the Evidence Act (2nd ed.), p. 812.

Clause (d): registration —*contd.*

be presumed to have been duly delivered to the addressee. Under the special rule in clause (*d*) of section 148 of the Bengal Tenancy Act, the presumption will only arise if the letter is posted and registered. A person refusing a registered letter brought by post cannot afterwards plead ignorance of its contents.[1]

Clause (*e*).

Clause (*e*) is analogous to the provisions of section 24 of the Presidency Small Cause Courts Act (XV. of 1882). As the summons is ordinarily for final disposal, a written statement cannot be filed without the leave of the Court. But, when a written statement is tendered, it should not be refused unless for good reasons.[2]

Clause (*f*).

Clause (*f*) declares that, in suits for the recovery of rent, whether an appeal[3] is allowed or not, evidence should be recorded according to the procedure laid down in Order XVIII, rule 13, of the Code of Civil Procedure (Act V., 1908), which runs as follows:—

Order XVIII. (13) of the Code of Civil Procedure, Act V., 1908 (First Schedule).

> In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge, and shall form part of the record.

Clause (*g*).

Under clause (*g*), an oral application for immediate execution can be made by the decree-holder at the time the Court is making the decree when it is purely for rent; but not if it be a decree for ejectment for arrears.[4] In the latter case, it is only upon failure of the defendant to pay the amount and costs within fifteen days from date of decree that an application for execution can be made; and such application must be in writing.

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[1] *Jogendro Chunder Ghose* v. *Dwarka Nath Karmokar* [1888], I. L. R., 15 Cal. 681. *See* also *Lootf Ali Meah* v. *Pearee Mohun Roy* [1871], 16 W. R. 223.

[2] Under Order VIII., rule 1, of the Code of Civil Procedure, Act V. of 1908 (First Schedule), a defendant is entitled to put in a written statement at any time before or at the first hearing of the suit. A written statement filed at the first hearing does not require a court-fee stamp.—*Cherag Ali* v. *Kadir Mohamed* [1882], 12 C. L. R. 367; *Nagu* v. *Yeknath* [1881], I. L. R., 5 Bom. 400. A written statement called for by the Court after the first hearing is also exempt from court-fee.—*See* s. 19, cl. (iii), of Act VII. of 1870 (the Court Fees Act).

[3] As to when an appeal lies, *see* s. 153, *post*.

[4] See s. 65 (p. 305, *ante*) as regards the tenants who are exempt from the penalty of ejectment for arrears of rent.

Clause (*h*) is one of the most important provisions of the Act. It excludes rent-decrees from the operation of section 232 of the Code of Civil Procedure (Act XIV., 1882).

Clause (*h*).

The provision of the present Code (Act V., 1908) corresponding to that section of the old Code of 1882 is Order XXI., rule 16 (First Schedule), which runs as follows :—

Order XXI., rule 16 (First Schedule), of the Code of Civil Procedure (Act V.), 1908.

Where a decree, or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree, is transferred by assignment in writing, or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree or such interest as aforesaid has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

Provided, also, that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Under clause (*h*), the assignee of a rent-decree cannot apply for execution "unless the landlord's interest in the land has become and is vested in him." This provision was introduced into the Act with the object of putting a stop to the practice, which was prevalent under the old law, of landlords, who had failed to realize their decrees for arrears of rent, assigning them to a co-villager of the judgment-debtor or some speculator—a practice which often led to considerable harassment and trouble.

Interest how vested.

The "vesting" of the landlord's interest may be by operation of law, as in the case of devolution by right of inheritance.[1] And a manager of the estate of a minor in whom the property has become vested, appointed by the Court of Wards, would be entitled to execute a decree obtained by a person who had been in possession of the property as executrix under a will, the *factum* of which was not proved.[1]

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[1] *Umasoondury Dassy* v. *Brojo Nath Bhuttacharjee* [1889], I. L. R., 16 Cal. 347.

Section 148 (h) —contd.: Meaning of "assignee."

The word "assignee," as used in this clause, does not include persons in whom a legal estate has vested by an act of the owner, but who have no independent interest in the property.[1] Nor does it include trustees who execute decrees under an assignment, not for their own benefit, but for the benefit of the heir of the assignor.

What interest an assignee of a rent-decree must acquire.

The interest acquired by the assignee must be the interest of the person obtaining the decree. Where an *ijaradar*, upon the expiration of his lease, assigned to his superior landlords a decree for rent, it was *held*[2] that, as the interest of the assignor *quâ ijaradar* had not vested in the assignees, they were not entitled to execute the decree.

Clause (h) does not apply to mere money-decrees.

The provisions of clause (*h*) of section 148 apply to a decree obtained by the decree-holder for arrears of rent *quâ* landlord, but not to a mere money-decree obtained by him as an ordinary suitor. Accordingly, where a landlord parted with his interest during the pendency of a suit for arrears of rent, the decree obtained by him was a mere money-decree, and the assignee thereof would be entitled to proceed in execution as such; but, if re-assigned to the original decree-holder, section 148 (*h*) no longer applies.[3]

Reassignment to original holder no bar.

The fact, that the decree which is sought to be executed was obtained by the landlord for arrears of rent which accrued due between the date of the sale of the tenure in execution of a previous decree for rent and the date of the confirmation of such sale, does not alter the nature of the decree, that is, convert it into a money-decree; and an application for its execution by the assignee thereof is barred under clause (*h*).[4]

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[1] *Chhatrapat Singh* v. *Gopi Chand Bothra* [1899], I. L. R., 26 Cal. 750: s. c., 4 C. W. N. 446. (Approved in *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal 737.)

[2] *Dwarka Nath Sen* v. *Peari Mohun Sen* [1896], 1 C. W. N 694

[3] *Nagendra Nath Bose* v. *Bhuban Mohan Chakravarti* [1901], 6 C. W. N. 91. *See* also *Maharaj Bahadur* v. *Forbes* [1908], I. L. R, 35 Cal 741

[4] *Karuna Moy Banerjee* v. *Surendro Nath Mookerjee* [1898], I. L. R., 26 Cal. 176.

Clause (*h*) of section 148 imposes a limitation upon the execution of a decree for rent, and therefore should be interpreted strictly, and should not be extended to any person who does not come properly within its provisions.

Section 148 (*h*)—*contd.*: Strict construction of clause (*h*).

The mere fact, that an assignment of a decree for arrears of rent was made before the Bengal Tenancy Act came into operation, will not entitle the assignee to ask the Court of execution to give effect to the decree.

Assignment before present Act came into operation.

The application of section 148 (*h*), however, is not retrospective, and consequently, if an order was made by a competent Court before the Act came into force, and such order recognized the assignment under section 232 of the Code of Civil Procedure, Act XIV. of 1882 (now Order XXI., rule 16, Act V., 1908, First Schedule), it was not for the Court, before whom the application for execution was made by the assignee, to consider any circumstances under which such order was made.[1]

When a decree for rent, obtained before the Bengal Tenancy Act came into operation, was assigned to a *benamidar* after the passing of the Act, and the assignee, in execution of the decree, purchased some of the properties belonging to the judgment-debtors, it was *held*[2] that the sale did not pass any title to the purchaser:

Assignment, after Act came into force, of decree obtained before.

Though the decree was passed under the former Rent Act, the assignment of the decree and the application for execution by the assignee having been made after the Bengal Tenancy Act came into operation, clause (*h*) of section 148 of that Act must apply to the execution-proceedings; and the sale upon such an application, which is prohibited by that clause, must be held to be no sale under the Rent Law."

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[1] *Koilash Chunder Roy* v. *Jodu Nath Roy* [1887], I. L. R., 14 Cal. 380.

[2] *Soshi Bhusun Guha* v. *Gogan Chunder Shaha* [1894], I. L. R., 22 Cal. 364; *Dino Nath Dey* v. *Golap Mohini Dasi* [1896], 1 C. W. N. 183. This view was followed in *Guru Charan* v. *Kartik Nath* [1905], 10 C. W. N. 44.

Section 148 (h)—concld.

A zamindar purchased a *patni* under himself at an auction-sale, and subsequently annulled (under section 167, *post*) a *darpatni* that the *patnidar* had created many years before. Later on, the *darpatnidar* executed a conveyance in favour of the *zamindar* in respect of all arrears of rent that were realizable from the tenants, and of all outstanding decrees for rent obtained against them. It was argued that the annulment under section 167 had not in any way enlarged the rights of the *zamindar* who had purchased the *patni*, and that he could recover nothing from the tenants of the *darpatnidar*. It was *held*[1] that the conveyance executed by the *darpatnidar* had transferred all his interests to the *zamindar* irrespective of the annulment; that section 148 (*h*) did not debar the *zamindar* from executing the decree for rent. just as the *darpatnidar* might have done; that it was not necessary for the assignee of the rent-decrees to make a fresh application for execution; and that the death of the appellant during the pendency of the appeal did not debar the prosecution of the appeal by her legal representative.

Right of purchaser of portion of occupancy-holding to have sale of holding in execution set aside.

Whether a purchaser of a portion of an occupancy-holding has a valid interest as against the landlord or not, he has such an interest in the holding as against the tenant as entitles him to make a deposit under section 310A of the Code of Civil Procedure (Act XIV. of 1882), in order to have a sale of the holding in execution set aside.[2] (The corresponding reference to the present Code, Act V. of 1908, is Order XXI., rule 89, of the First Schedule.)

Additions by Acts I. of 1907 (Bengal) and I. of 1908 (E. B. Assam).

Clauses (*b 1*) and (*b 2*) were explicitly added to compel Munsiffs to pay attention to entries in records-of-rights, and to insist that such entries should be considered by the Court whether produced by the parties or not.

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[1] *Manmatha Nath Mitter* v. *Rakhal Chandra* [1910], 14 C. W. N. 752.
[2] *Kunja Behari Mundal* v. *Sambhu Chunder Roy* [1903], 8 C W. N. 232.

The General Letter of the High Court No. 9 of December 1908, mentioned under section 147B above, reiterates the necessity of complying with this section. Additions &c.—*contd.*

Clause (*ff*) was added to suit the convenience of landlords and others who might otherwise experience difficulties in prosecuting several suits simultaneously for which only one set of account-books, collection-papers, &c., exists. Cause (*ff*).

Act I. of 1908 (E. B. Assam) includes "extracts from records-of-rights" in clause (*ff*).

[148A. Where a co-sharer landlord, who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties-defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords-defendant to the suit, to furnish him with correct information on these points, or on either of them, Suits for arrears of rent by co-sharer landlords.—Bengal Act I., 1907, only.

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.]

[148A. Where a co-sharer landlord, who is entitled to sue for his share of the rent separately, and has instituted a suit to recover the rent due to all the co- Suits for arrears of rent by co-sharer landlords.—E B Assam Act I., 1908, only.

sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties-defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords-defendant to the suit, to furnish him with correct information on these points, or on either of them,

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers]

Object of section 148A.

The object of section 148A is to set aside some rulings of the High Court to the effect that—

(1) suits by one or more co-sharer landlords for rent are not rent-suits, but money-suits:

(2) the provisions of section 148 do not apply to them:

(3) evidence in such suits cannot be recorded summarily:

(4) a second appeal lies in such suits, while an appeal is barred in the case of a decree obtained by a sole landlord:

(5) co-sharer landlords cannot sue for four years' rent as sole landlords can under article 2 (*b*), Schedule III. of the Act; and

(6) decrees in suits not brought by the whole body of co-sharers can be executed within twelve years instead of within three, as in the case of ordinary rent-decrees.

Section 148A brings a decree obtained by one only of several co-sharers into line with ordinary rent-decrees obtained under this Act.

It may be noted here that an *obiter dictum* of the Calcutta High Court has laid down[1] that a suit for rent is not a proceeding under the Bengal Tenancy Act, and a Privy Council case—*Pramada Nath Roy* v. *Ramani Kanta Roy*[2]—is quoted as the authority for that view. But it must be pointed out that there is nothing whatever in the Privy Council case cited that justifies such a proposition. All that it says is, that the bringing of a suit for rent is not a thing which a landlord is 'required' or 'authorized' to do within the meaning of section 188 of this Act, *q. v.*

Payment into Court of money admitted to be due to third person.

149. (*1*) When a defendant admits that money is due from him on account of rent, but pleads that it is due, not to the plaintiff, but to a third person, the Court shall [*except for special reasons to be recorded in writing*] refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Now omitted by Bengal Act I., 1907, and E. B Assam Act I., 1908.

(*2*) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(*3*) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff, and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

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[1] *Mulluk Chand Dass* v. *Satish Chandra Dass* [1909], 14 C. W. N. 337.
[2] I. L. R., 35 Cal. 331 [1907].

(*4*) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (*3*).

Reference. Section 60 (*ante*, page 294) should be referred to.

Former law. Section 77 of Act X. of 1859 enabled persons claiming rent from the tenant adversely to the plaintiff to intervene in suits for the recovery of rent. This provision was omitted from the Bengal Act VIII. of 1869.

Issues in rent-suit. A suit for rent proceeds on only two issues, *viz.*, (*1*) does the relation of landlord and tenant exist between the plaintiff and defendant; (*2*) are the alleged arrears of rent due and unpaid? And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues; and, when a person sued for rent puts forward the plea that he holds under, and pays rent to, a third party, the latter should not be joined in the suit so as to convert a simple action for arrears of rent into a suit for the determination of title to the land in respect of which the rent is claimed,[1] or for the establishment of the relation of landlord and tenant.[2]

Object of the section. In the present section, the Legislature has given effect to the principle indicated above on grounds of expediency as well as convenience. The object of section 149 is to prevent tenants being harassed by disputes between rival claimants to land in respect of which rent is due, and, consequently, whether the dispute between such parties is a dispute as to title or a dispute as to possession only, they are at liberty to have that

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[1] *Lodai Mollah* v. *Kally Dass Roy* [1881], I. L. R., 8 Cal 238: s. c., 10 C. L. R 581.

[2] *Haranandu Bannerji* v. *Ananta Dasi* [1905], 9 C. W. N. 492.

tried; and, in the suit in which that question is being tried, to obtain the injunction mentioned in sub-section (*3*) of section 149.[1]

Procedure in suit under section 149 (3)

The Calcutta High Court has since *held*[2] that a suit brought under the provisions of section 149, sub-section (*3*), should not be dismissed merely because the plaintiff does not ask for a declaration of his title, but rests his claim to the rent on an allegation of actual possession. The question of possession, it was *held*, should be tried first, and, if found against the plaintiff, the suit should be dismissed; and, if his possession is established, the defendant would be put to the proof of his title. The question of title, as well as of possession, has to be tried;[3] and, until the plaintiff establishes his title to the rent, he cannot obtain the injunction mentioned in section 149 (*3*). It was *ruled*[4] that section 149 does not apply to a suit for rent brought by a co-sharer landlord. But this was before section 148A was added to this Act, and its effect has to be borne in mind.

Sub-section (6)

Where a suit was brought under the provisions of section 149 (*3*), and the plaintiff made out a very strong case in support of his title to the rents in deposit, it was *held*[5] that the *onus* was then shifted on to the defendant, and that plaintiff was entitled to succeed even though she could not prove

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[1] *Rubiunnessa* v. *Gooljan Bibee* [1800], I. L. R., 17 Cal. 829. In *Jagadamba Devi* v. *Protap Ghose* [1887], I L. R., 14 Cal. 537, which was referred to the High Court under the provisions of s. 617 of the Code of Civil Procedure on the question of stamp-fee payable on a plaint under s. 149, the learned Judges (TOTTENHAM and NORRIS, *JJ.*) expressed the opinion that a suit under s 149 (*3*) of the Bengal Tenancy Act was not a title-suit, and therefore need not be stamped as such. And TOTTENHAM, *J.*, expressed an opinion that such an action "is in the nature of a suit for an injunction under the Specific Relief Act, or else of a declaratory suit." NORRIS, *J.*, did not think it necessary to express any opinion "as to what sort of suit it is" The reference before the learned Judges related simply to the question of stamp-fee. The opinion of TOTTENHAM, *J.*, therefore, was simply a *dictum*, and it was expressly dissented from in *Rubiunnessa* v *Gooljan Bibee*, supra.

[2] *Jadub Lall Roy Chowdhury* v. *Srimutty Khemunkari Debya* [1904], 8 C. W. N. 248.

[3] *Kazi Mahomed* v. *Shekh Kadir* [1906], 11 C. W. N. cxxviii.

[4] *Rash Bihari Ghose* v. *Lalit Kumar* [1905], 9 C. W N. ccxcii.

[5] *Trailokhya Mohini Dasi* v. *Kali Prosonna Ghose* [1907], 11 C. W. N. 380.

realisation of rents from the tenant. Her case was that defendant had prevented her from realizing them. Although the matter relating to plaintiff's title was not *res judicata* against the defendant, still the matter having been in issue in a suit to which defendant was a party (which suit was decided in favour of plaintiff, and, in accordance with the decree in it, a conveyance was executed in favour of the plaintiff's predecessor in title), it was *held*[1] that this constituted a strong case in favour of plaintiff's title and possession, which it lay heavily on defendants to disprove.

Service of notice.

The service of notice under sub-section (*2*) must be in accordance with the rules prescribed by Government.—*See* Rule 3, Chapter I. of the Government Rules in Appendix V., *infra*.

Payment into Court of money admitted to be due to landlord.

Omitted by Bengal Act I., 1907, and E. B. Assam Act I., 1908.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall [*except for special reasons to be recorded in writing*] refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

The section to be strictly construed.

This section has been held to be highly penal in its character, and cannot be put in force against a defendant unless he has intentionally admitted money to be due, and has not paid it; and such admission must be in the action itself. Where it is evident that there was no such admission, the section does not apply. "For the purpose of ascertaining whether anyting is admitted to be due and payable by this written statement, the whole of it must be taken into consideration, and, further, must be assumed to be true."[2]

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[1] *Trailokhoya Mohini Dasi* v *Kali Prosonna Ghose* [1907], 11 C. W. N. 380 (*supra*).

[2] *Ali Ahammad Sirdar* v *Bepin Behari Bose* [1891], I. L. R., 20 Cal. 595.

The section is limited to cases in which the plea of the tenant is one in respect of which the burden of proof lies upon him: in other words, where it is a plea of confession and avoidance. The section, therefore, does not apply to a case in which the rate of rent is in dispute.[1]

Restriction on application of the section.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Provisions as to payment of portion of money.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt; and the receipt so given shall operate as an acquittance in the same manner, and to the same extent, as if it had been given by the plaintiff or the third person, as the case may be.

Court to gran receipt.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent, where—

Appeals in rent-suits.

(*a*) the decree or order is passed by a District Judge, Additional Judge, or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

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[1] *Banarasi Pershad* v. *Makhan Roy* [1903], I L. R., 30 Cal. 947.

unless, in either case, the decree or order has decided a question relating to title to land, or to some interest in land, as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally, or with material irregularity, and may pass such order as the District Judge thinks fit.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land, or to some interest in land, as between parties having conflicting claims thereto.]

References.

Cf. section 153 of Act X. of 1859 and section 102 of Bengal Act VIII. of 1869.[1]

Principle.

Section 153 of the present Act takes away the right of appeal, under certain circumstances, in suits instituted by landlords for the recovery of rent. The "*Explanation*" was added in 1907, 1908, to define more exactly the scope of the section.[2]

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[1] S. 102 of Bengal Act VIII. of 1869 ran as follows:—

"Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed does not exceed one hundred rupees, in which suit a question of right to enhance or vary the rent of a *raiyat* or tenant, or any question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has not been determined by the judgment."

[2] *See* p. 630, *post*, last paragraph.

For a list of Munsiffs who have been invested with powers under section 153, clause (*b*), *see* Notification No. 945 J. D., dated the 15th June 1894, in the *Calcutta Gazette*, 27th *idem*, Part I., page 713. Practically all Munsiffs of five years standing are invested with these powers.

Munsifs empowered under clause (*b*).

When a Munsiff has once been specially empowered under section 153 (*b*), it is not necessary to invest him with such powers again afresh on transfer to another district.[1]

Bar to appeal.

The bar to an appeal depends on two facts—(1) the amount of the claim in the suit, and (2) the nature of the decree made in the action. But, in order to give rise to the bar, the suit must be one between the landlord and tenant.[2] A suit for back rents by an assignee from the previous landlord does not come under section 153. Nor does the section apply where the claim, though nominally for rent, is in reality for mesne-profits or damages.[3] Apparently[1] no appeal would lie against an order of a Munsiff dismissing a suit, because the relationship of landlord and tenant was not proved to exist, and the value of the suit was not more than 50 rupees. But, unless section 193 of this Act is applicable to a suit for rent of a share in a tank, section 153 does not apply, and a first and second appeal would lie.[4] This was held, on the construction of the lease of the tank, in that case.

When a second appeal lies.

Where the amount claimed in the suit does not exceed Rs. 100 or Rs. 50, having regard to the provisions of clauses (*a*) and (*b*), respectively, a second appeal will lie only if the decree or order has decided (1) a question relating to title to land, or to some interest in land as between parties claiming adversely to each other, or (2) a question of a right to enhance or vary the

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[1] *Shilabati Debi* v. *Roderigues* [1908], I. L. R., 35 Cal. 547.

[2] *Kali Nath Mukerjee* v. *Kefatullah Molla* [1897], 1 C. W. N. cxix; *Mohendro Nath Kalamori* v. *Kailash Chandra Dogra* [1900], 4 C. W. N. 605.

[3] *Chandi Charan Tarafdar* v. *Jogendra Chandra Chowdhury* [1897], 1 C. W. N. cxx.

[4] *Gour Mohan Ghose* v. *Chandi Charan* [1910], 14 C. W. N. clix. *See* also *Ramkanai Dass* v. *Fakirchand* [1904], 8 C. W. N. 438 (on p. 633, *post*).

rent, or (3) a question relating to the amount of rent payable by a tenant. It will be noticed that the first two reservations are reproduced from section 102 of Bengnl Act VIII. of 1869, but the third embodies a new provision. Where the claim exceeds Rs. 100 [in the cases referred to in clause (*a*)] or Rs. 50 [in the case referred to in clause (*b*)] a second appeal is not barred. If the amount sued for was more than Rs. 50, but was reduced below Rs. 50 on the case coming on for trial, the claim is less than Rs. 50.[1] When a second appeal does lie, either in consequence of the value of the suit or of the nature of the decree, it is subject to the rules laid down in section 100 of the Code of Civil Procedure[2] (Act V. of 1908).

Amount sued for must appear from the proceedings.

In order to give rise to the bar to an appeal, it must appear, upon the finding of the Judge, or from the proceedings of the case, that the amount sued for does not exceed one hundred rupees. In the absence of such material, the High Court has no right to draw any inference to that effect.[3]

Meaning of "order."

The word "order" in section 153 does not mean merely a final order; it includes interlocutory orders otherwise appealable, *e. g.*, an order of remand in a suit for rent in which the claim does not exceed Rs. 100 unless it decides any of the questions mentioned above.[4]

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[1] *Shilabati Debi* v. *Roderigues* [1908], I. L. R., 35 Cal. 547.

[2] S. 100 provides: "Save where otherwise expressly provided in the body of this Code, or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely, (*a*) the decision being contrary to law or to some usage having the force of law; (*b*) the decision having failed to determine some material issue of law or usage having the force of law; (*c*) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits. An appeal may lie under this section from an appellate decree passed *ex parte*."

[3] *Tulsi Panday* v. *Lala Buchu Lal* [1883], I. L. R., 9 Cal. 596: s. c., 12 C. L. R. 223.

[4] *Gagan Chand Sardar* v. *Casperse* [1897], 4 C. W. N. 44; *Batasu Sircar* v. *Jaiti* [1899], 3 C. W. N. lxii.

The word "suit" in section 153 includes all proceedings in execution of the decree made in the suit; and therefore no second appeal lies against an order made in the course of execution, unless it fulfils the same conditions. Meaning of "suit."

In determining this question, we think that the section itself ought, in the first instance, to be referred to in order to ascertain if it throws any light upon the question. And, referring to the section, we find that it evidently uses the term "suit," not in its narrow sense, for it speaks of "any order or decree passed, whether in the first instance or on appeal, in any suit," thereby indicating that a decree or order passed on appeal is a decree or order passed in a suit. Starting with this indication afforded by the section itself, that the term "suit" is not used in its narrow sense, have we anything to indicate that it is used nevertheless in a narrow sense, so far as to exclude proceedings in execution? We must say that neither the language of the section, nor its aim and intention, so far as we can gather the same from the section, would furnish any ground for imposing such limitation on the meaning of the term "suit." Then, from section 647 of the Code of Civil Procedure, it appears that applications for execution of decrees are proceedings in suits. It was argued for the appellant that that section does not say that they are to be regarded as proceedings in the suits in which the decrees were made. If they are not proceedings in the suits in which the decrees are made, it is difficult to see what other suits they are proceedings in. It was suggested that they are proceedings in suits in the sense of the proceedings being themselves treated as suits. We do not consider that view correct.

Then, looking to the reason of the thing, can we say that there is any reason in favour of the limitation which the learned vakil for the appellant contends for? If section 153, with the evident object of preventing protracted litigation in cases of small value not affecting any permanent interests, bars an appeal from a decree or order passed in a suit for recovery of rent valued at an amount not exceeding Rs. 100, when such decree does not decide any of the questions referred to in the section, can there be any reason why, nevertheless, the Legislature should have intended to allow an appeal against an order made in a proceeding for the enforcement of such a decree? We are of opinion that this question must be answered in the negative.[1]

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[1] *Shyama Charan Mitter* v. *Debendra Nath Mukerjee* [1900], I. L. R., 27 Cal. 484: s. c, 4 C. W. N. 269. *See* also the newly added '*Explanation*' to the section, *ante*.

It was *held*[1] that no appeal lies from an order passed by a District Judge setting aside a sale in execution of an *ex-parte* decree for rent valued at less than Rs. 100; but this view was not taken in a later case mainly (it would appear) because the decree in question in this later case was not an *ex-parte* decree. It was *held*[2] that an order setting aside a sale in execution of a decree decides a question relating to the title to the land or to some interest in the land as between parties having conflicting claims thereto, and is therefore appealable under section 153 of the Bengal Tenancy Act (VIII. of 1885), although it was made by an officer specially authorized under the section in a suit for rent valued at less than fifty rupees.

In deciding whether an order is appealable under that section, the point for consideration is not what the decree in the suit decided, but what the order decided.[2]

Where a Court rejects an application under sections 244 and 311 of the Civil Procedure Code [*now* section 47 and rule 90 of Order XXI. (First Schedule), respectively, of Act V. of 1908 (the new Code)] on the ground that the applicant had no *locus standi*, the case would not fall within section 622 (*now* 115) of the Code.[2]

Act XIV., 1882.

In a subsequent case,[3] the decision in the case—*Monmohini Dasi* v. *Lakhi Narain*[4]—was considered by a Full Bench, and it was expressly dissented from, it being *decided*[3] that an order setting aside, or declining to set aside, a sale in execution of a decree for rent, the decree-holder being the purchaser, falls within the proviso to section 153 of the Bengal Tenancy Act, and is appealable, although there could be no appeal from the decree in the suit on account of the prohibition contained in that section. But the "*Explanation*" lately added to the section sets aside this ruling, and prohibits such appeals.

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[1] *Monmohini Dasi* v. *Lakhi Narain Chandra* [1900], I. L. R., 28 Cal. 116 (dissented from in *Kali Mandal* v. *Ramsarbaswa Chakravarty* [1905], I. L. R., 32 Cal. 957 : 9 C. W. N. 721.

[2] *Ganga Charan* v. *Soshi Bhusson Roy* [1905], I. L. R., 32 Cal. 572.

[3] *Kali Mandal* v. *Ramsarbaswa Chakravarty* [1905], I. L. R., 32 Cal. 957 : 9 C. W. N. 721.

[4] I. L. R., 28 Cal. 116 [1900].

The term "amount" in section 153 means, not merely the amount of rent claimed, but the whole amount claimed in the suit. Where, therefore, the amount of rent was below Rs. 100, but, in addition to interest, exceeded that sum, it was *held*[1] that a second appeal was not barred.

Meaning of "amount."

No second appeal lies to the High Court from a decision of the District Judge staying execution in a suit for arrears of rent, where the amount decreed is less than Rs. 100, merely because the decree directs that, on failure to pay the amount, the defendant will be ejected.[2]

Ejectment does not give a right of second appeal.

The section provides that, where a question relating to title to land, or to some interest in land, as between parties having conflicting claims thereto, is decided in a decree or order, an appeal will lie irrespective of the amount of the claim. The character and scope of the decree or order have therefore to be considered in coming to a conclusion as to whether an appeal lies or not.

When an appeal will lie irrespective of the amount of claim.

Where the lower Court determined a question of law relating to the nature of a tenure, *viz.*, whether it was a *guzashta* or not, it was *held*[3] that an appeal lay, although the value of the suit was under Rs. 100.

Appeal when question of law determined.

In an action for rent, the plaintiff alleged that she was the proprietress of a share of a *zamindari*, and also held other shares as *patnidar* and *darpatnidar*, and had got her name registered in respect of those shares under the Land Registration Act, 1876. The principal defendant denied the relationship of landlord and tenant, and also pleaded that, inasmuch as the name of the plaintiff was not registered under the Act, the suit was not maintainable. The Court of first instance dismissed the suit, holding that the plaintiff

Appeal when decree decided a question of title to, or interest in, land.

Act VIII. (B. C.), 1876.

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[1] *Behary Churn Sen* v. *Bhut Nath Pramanik* [1898], 3 C. W. N. 214.
[2] *Parbutty Churn Sen* v. *Mondari* [1879], I. L. R., 5 Cal. 594.
[3] *Baijnath Sahai* v. *Ramdaur Rai* [1880], 7 C. L. R. 369.

had failed to prove the relationship of landlord and tenant, and also that, as the plaintiff did not get her name registered, the suit was not maintainable. The Subordinate Judge, on appeal, decreed the suit on the ground that, under the Land Registration Act, 1876, it was not necessary to register the name of the *patnidar* in order to maintain the suit. He, however, did not decide the question whether the relationship of landlord and tenant existed between the parties. On second appeal by the defendants, it was *held*[1] that the decree decided a question relating to title to land, or to some interest in land, as between parties having conflicting claims thereto, and therefore that an appeal lay.

Bengal Act VIII., 1876.

Appeal when defendant denies plaintiff's title.

Similarly, where the plaintiff claimed rent on the ground that the defendant was his sub-tenant, while the defendant pleaded that he held directly under the *zamindar*, and was the tenant of the land under him, and the plaintiff's suit was dismissed, it was *held*[2] that a second appeal would lie.

But, where the question raised was one between a tenure-holder and a *raiyat*, and the latter set up the title of a superior tenure-holder, who was not a party to the suit, it was *held*[3] that no second appeal would lie.

Again, where the defendant claimed to hold under the plaintiff and his mother, under a right different from that which was set up by the plaintiff, it was *held*[4] that no second appeal would lie.

Where plaintiff and defendant claimed under the same landlord, the former as a *jotedar* and the latter as a *bargadar*,[5] the settlement with the defendant having been prior to that

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[1] *Sukurullah Kasi* v. *Bama Sundari Dasi* [1897], I. L. R., 24 Cal. 404.
[2] *Sita Nath Pal* v. *Kartick Gharami* [1904], 8 C. W. N. 434.
[3] *Ram Mohan Mohesh* v. *Badan Barai* [1904], 8 C. W. N. 436.
[4] *Dina Bandhu Nandi* v. *Nobin Chundra Kur* [1904] 8 C. W. N. 437.
[5] A *barga* settlement does not give rise to the relationship of landlord and tenant.—*Kader Mandal* v. *Ahad Ali* [1910], 14 C. W. N. 629.

with the plaintiff, the Subordinate Judge held that the plaintiff's position as tenant was not superior to that of the defendant, and that the relationship of landlord and tenant did not exist between the two, since there was no proof of an assignment of the right of the plaintiff's lessor to collect rent from the defendant. On appeal to the High Court, it was *held* that the decision of the Subordinate Judge, as regards the status of the plaintiff in relation to the defendant, was foreign to the object of the suit and quite irrelevant, and that the plaintiff's position was that of an intermediate holder with a right to receive rent from the defendant, and that, since there was a question of title between parties having conflicting claims, a second appeal would lie. On further appeal under section 15 of the Letters Patent, however, it was *decided*[1] by the High Court that, since the Subordinate Judge had found that the relationship of landlord and tenant did not exist, and since the High Court was bound by that finding, the decision of the Subordinate Judge must be upheld.

Under the old law, it was *held*[2] that, although the tenant-defendant pleads, in a suit for rent, that he holds under another person, if that person is not a party to the action, any decision therein cannot be considered binding in respect of title as between parties having conflicting claims to the land. No such question can arise under the present Act, as it does not contemplate the joinder as a party to the action of the person whose title is set up by the defendant.

Appeal when rent varied.

Where the Court has determined the right of the landlord to enhance or vary the rent payable by the defendant,

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[1] *Ram Kanai Dass* v. *Fakir Chund Das* [1904], 8 C W. N. 438.

[2] *Shaikh Dilbur* v. *Issur Chunder Roy* [1873], 21 W. R. 36; *Kashee Ram Doss* v. *Maharanee Sham Mohinee* [1875], 23 W R. 227; *Raj Kishen Mookerjee* v. *Sreenath Dutt* [1875], 23 W R. 408; *Lodai Mollah* v. *Kali Dass Roy* [1881], I. L. R., 8 Cal. 238; *Doorga Narian Sen* v. *Ram Lal Chhutar* [1881], I. L. R., 7 Cal. 330; *Roma Prosad Roy* v. *Shorup Paramanick* [1882], I L. R., 8 Cal. 712.

the law gives a second appeal.[1] But, where a suit was brought on the basis of an *ikrarnama*, and the defendant denied its execution, and produced witnesses to prove that the rates therein mentioned were not correct, it was *held*[2] that no second appeal lay, as no question of right to vary the rent was involved in the action. These decisions, although under the old law, would be applicable under the present enactment.

Appeal when amount of rent payable is decided.

The words, "or a question of the amount of rent annually payable by a tenant," in section 153 of the present Act, which allow a right of second appeal, are an important variation in the old law. They contemplate a second appeal in all actions where the amount of rent payable by the defendant is in question. The question, as to whether rent is payable in cash or kind, is a question as to the "amount of rent" within the meaning of section 153.[3]

As section 102 of Bengal Act VIII. of 1869 gave no right of appeal in this class of cases[4] when the suit had been decided before the passing of Act VIII. of 1885, a second appeal is barred even if preferred after the latter Act came into operation.[5] Even where the judgment was delivered, and the first appeal heard subsequent to the passing of Act VIII. of 1885, a second appeal was *held* to be barred, having regard to the provisions of section 6 of the General Clauses Act, 1868 (I. of 1868).

The words "amount of rent annually payable by a tenant" include the case of rent payable by a tenant to one of the co-sharer landlords who collects his rent separately.[6]

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[1] *R. Watson & Co.* v. *Ram Dhun Ghose* [1872], 17 W. R. 496.

[2] *Maharaj Coomar Nitressur Singh* v. *Jhotel Tely* [1875], 23 W. R. 343.

[3] *Apurba Krishna Roy* v. *Asutosh Datta* [1905], 9 C. W. N 122.

[4] See *Huro Pershad Chuckerbutty* v. *Sredham Chunder Chowdhry* [1873], 20 W. R 15; *Hurish Chunder Chuckerbutty* v *Huree Bewah* [1873], 20 W. R. 16; *Nurubdessur Pershad Roy* v. *Shaik Jungole* [1875], 24 W. R. 49.

[5] *Hurro Sundari Dabi* v. *Bhojohari Das Manji* [1886], I. L. R., 13 Cal. 86; *Satghuri* v. *Mujidan* [1887], I. L R., 15 Cal. 107

[6] *Aubhoy Churn Maji* v. *Shoshi Bhusan Bose* [1888], I. L. R , 16 Cal 155; *Narain Mahton* v. *Manofi Pattuk* [1890], I L R, 17 Cal. 489, F. B. (overruling *Prasanna Kumar Banerjee* v. *Srinath Dass* [1887], I. L. R., 15 Cal. 231).

Where, in a suit instituted by a co-sharer landlord for the recovery of rent, the amount claimed did not exceed Rs. 100, but the question raised and determined was, not merely the amount of rent payable to the co-sharer, but also whether he had a title to recover a particular share of the rents of a particular *mauza*, it was *held*[1] that the suit came under the exception mentioned in section 153.

If a question relating to the amount of rent annually payable is decided by the decree, an appeal would not be excluded even though that question does not directly form the subject of the appeal.[2]

Where the plaintiff claimed to be entitled to the full amount of rent payable by a tenant, and the lower Court was of opinion that he was entitled to a less amount, inasmuch as a part of the tenure had been sold in execution of a decree for road-cess, and had passed into the hands of a third party, it was *held*[3] that a second appeal lay.

In order to exclude a right of appeal under section 153, the suit must be in reality an action for rent; a suit for compensation or damages in the guise of a claim for rent does not come within the purview of section 153.[4] Where the only issue decided is, to whom the rent claimed is payable, *i.e.*, to the plaintiff or the person set up by the defendant as his landlord, and there is no dispute as to the amount of rent, it has been *held*[5] that there is no right of second appeal. Similarly, where, upon the failure of the plaintiff to prove the rate of

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[1] *Poresh Moni Dassya* v. *Nobo Kishore Lahiri* [1904], 8 C. W. N. 193.

[2] *Sripati Bhattacharja* v *Kala Chand Ghose* [1897], 1 C. W. N. clxxxvii; *Rai Churn Ghosh* v. *Kumud Mohun Dutta* [1897], 1 C. W. N. 687.

[3] *Nobin Chand Nuskar* v. *Bansenath Paramanick* [1894], I. L. R., 21 Cal. 722. This was the decision of a single Judge (RAMPINI, *J.*); but, although an appeal was preferred under clause 15 of the Letters Patent, no objection appears to have been taken to this view.

[4] *Chandi Charan Tarafdar* v. *Jogendra Chandra Chowdhury* [1897], 1 C. W. N. cxx.

[5] *Baidya Nath Bahara* v. *Dhun Krishna Sirkar* [1900], 5 C. W. N. 515.

rent claimed by him, a decree is made at the rate admitted by the defendant, it is not a determination of the amount of rent payable, and therefore no second appeal would lie.[1]

But the decree must be exactly in accordance with the admission of the tenant:[2] otherwise an appeal would lie to the High Court. It was incumbent on the Court to accept the admission of the tenant as a whole, regard being had to the question whether the land in the defendant's possession was the same as it was when the tenancy was created.

When the only question decided relates to the amount of interest payable, and the value of the subject-matter of the suit does not exceed Rs. 100, there is no right of second appeal.[3] Nor is there a right of appeal when the question relates to the instalments in which the rent is payable.[4] The question relating to instalments, though it affected the question of interest on the rent, was not a question of the "amount of rent annually payable" within the meaning of section 153.[4]

In another case, where the Subordinate Judge had decided that the *kabuliyats*, on the basis of which certain suits for rent were brought, were genuine, and that the plaintiffs were entitled to receive rent from the defendants at the rates mentioned therein, the High Court *held*[5] that the decision was not a decision of a question of the amount of rent annually payable by the tenants; and, consequently, that an appeal was barred.

Cesses. Under the provisions of section 47 of Bengal Act IX. of 1880 (the Cess Act), cesses are recoverable in the same way as an arrear of rent; and, under clause (*5*) of section 3 of the

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[1] *Nehejaie* v. *Nanda Lal Banurji* [1897], 1 C. W. N. 711.
[2] *Shib Nath Dhar* v. *Annoda Prasad Dhar* [1910], 14 C. W. N. lxxxiv.
[3] *Koylash Chandra De* v. *Tarak Nath Mandal* [1897], I. L. R., 25 Cal. 571.
[4] *Rai Charan Ghose* v. *Kumud Mohun Dutt Chowdhry* [1898], I. L. R., 25 Cal. 571; s. c., 2 C. W. N. 297.
[5] *Basiruddi* v. *Nolini Bhusan Gupta* [1889], 6 C. W. N. lxxxviii.

present Act, "rent," for the purposes of certain portions of the Act, includes also "money recoverable under any enactment for the time being in force as if it was rent." An action for cesses, therefore, is really a suit for rent; and, where the defendant raises no question as to the amount of cess payable by him to the plaintiff, if the amount of the claim does not exceed Rs. 100, an appeal would be barred.[1]

In another case,[2] where a preliminary objection was taken by the respondent to the hearing of a second appeal, the learned Judges expressed themselves as follows:—

The suit is to recover from the defendant rent due to the plaintiff, including cesses and *dâk* tax, and the amount claimed is less than a hundred rupees. The *dâk* cess is claimed under the contract by which the rent is payable; it is claimed practically as part of the rent; and according to the definition of that word as contained in the Bengal Tenancy Act, we think it must be regarded as rent, that is to say, as a part of what is lawfully payable in money for use and occupation of the land held by the tenant. The occupation of the land was the consideration for the payment of the *dâk* cess; and, that being so, the amount of rent is in dispute, and this takes the case out of the provisions of section 153, which, in certain cases, bars an appeal.

Revisional powers of a District Judge.

The revisional powers of the District Judge are, under the proviso to section 153. limited to decrees and orders made by "a judicial officer as aforesaid," that is, a "judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section [*see* clause (*b*)]. He has no revisional jurisdiction in respect of the orders or decrees of another District Judge, an Additional Judge, or a Subordinate Judge[3] referred to in clause (*a*) of section 153. An Additional Judge has no revisional powers under the proviso.[4]

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[1] *Mohesh Chunder Chattopadhya* v. *Umatara Deby* [1889], I. L. R., 16 Cal. 638. *See* also *Rajani Kant Nag* v. *Jageshwar Singh* [1892], I. L. R., 20 Cal. 254.

[2] *Watson & Co.* v. *Sreekristo Bhumick* [1893], I. L. R., 21 Cal. 132.

[3] *Sankarmoni Debya* v. *Mathura Dhupini* [1888], I. L. R., 15 Cal. 327.

[4] *Gaudna* v. *Jabanulla* [1900], 5 C. W. N. xlviii.

If a District Judge acts without jurisdiction by revising a Munsiff's judgment on a question of law, the High Court can revise his order.[1]

Suit by co-sharer landlord.

It was *held*[2] that section 153 does not apply to the case of a suit for rent by a co-sharer landlord, but section 158B, *post*, was introduced into the Act explicitly to set aside this ruling which was dissented from in a later case[3] following the principle enunciated in a Privy Council case.[4]

In one case it was *held*[5] that a suit by a co-sharer landlord for his share of the rent only, without making the other co-sharers parties, is a suit instituted by a landlord for rent within the meaning of section 153. Hence no appeal lay against the Munsiff's order [specially empowered under section 153 (*b*)] when the claim was less than Rs. 50. On an appeal being wrongly admitted by the Subordinate Judge, by whom the Munsiff's decision was reversed, no second appeal lay against that order; but, it being without jurisdiction, it was set aside under section 622 of Civil Procedure Code, Act XIV. of 1882 (now section 115, Act V., 1908).

Deposit on application to set aside *ex-parte* decree.—Begal Act I., 1907; E B. Assam Act I., 908.

[153A. Every application for an order under section 108[6] of the Code of Civil Procedure to set aside a decree passed *ex parte*, or for a review of judgment under section 623[6] of the said Code, in a suit between a landlord and tenant, as such, shall contain a statement

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[1] *Horanando Banerji* v. *Ananta Dasi* [1905], 9 C. W. N. 492

[2] *Jogendra Nath Ghose* v. *Paban Chandra Ghose* [1904], 8 C. W. N. 472 (dissenting from a previous decision [1903], 7 C. W. N. 908).

[3] *Bhagabati Bewa* v. *Nand Kumar* [1908], 12 C. W. N. 835.

[4] *Promoda Nath Roy* v. *Ramani Kanta Roy* [1907], I. L. R., 35 Cal. 331 (P. C.).

[5] *Bhagabati Bewa* v. *Nanda Kumar Chuckerbutty* [1908], 12 C. W. N. 835 (following *Promoda Nath Roy* v. *Ramani Kanta Roy* [1907], 12 C. W. N. 249; dissenting from *Jogendra Nath Ghose* v. *Paban Chandra Ghose* [1904], 8 C. W N. 472).

[6] That is, ss 108 and 623 of the old and repealed Code (Act XIV. of 1882), which correspond *now* to r 13 of O. XI. of the First Schedule, and s. 114 read with r. 1 of O. XLVII. of the same Schedule, respectively, to Act V. of 1908 (the present Code repealing the former).—*See* s. 158 of Act V., 1908.

of the injury sustained by the applicant by reason of the decree or judgment;

and no such application shall be admitted—

(*a*) unless the applicant has, at or before the time when the application is admitted, deposited, in the Court to which the application is presented, the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(*b*) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.]

Object of the section.

This section (153A) was added by the Amending Acts of 1907 and 1908 to prevent the filing of vexatious applications for the purpose of delay under Order IX., rule 13, and under section 114 and Order XLVII., rule 1, of the Civil Procedure Code, in cases in which an *ex-parte* decree has been passed.

Act V., 1908

It is within the discretion of the Court to excuse a deposit for sufficient reasons. Apparently, if the applicant for the reversal of an *ex-parte* decree stated that no sum was due from him, *or* that the relationship of landlord and tenant did not exist, no deposit could be demanded from him.

Formerly a similar discretion was given to Courts in dealing with applications under sections 149 and 150. This discretionary power has been withdrawn. [*Vide* notes on those sections.]

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take

effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Meaning of "Agricultural year."

For definition of the term "agricultural year," *see* section 3, clause (*11*), *ante*, page 73.

Relief against forfeitures.

155. (*1*) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the

misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy; and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff; and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Cf. sections 10, 18 (*b*), 25, and 44 (*a*), *ante*, which lay down that permanent tenure-holders and *raiyats* holding at fixed rates are not liable to ejectment on ground (*a*) only of section 155 (*1*) as above while occupancy and non-occupancy *raiyats* are liable to ejectment on both of the grounds—(*a*) and (*b*). References.

The difference between section 155 of the present Act and section 14 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vic., c. 41), has been considered by the High Court[1]— Comparison of section 155 with 44 & 45 Vic., c 41 section 14.

Our attention has been called to an English Statute from which the first portion of section 155 has been taken, namely, section 14 of the Conveyancing and Law of Property Act, 1881. The words of the first portion of that section are practically the same as those of the

[1] *Pershad Singh* v. *Ram Pertab Roy* [1894], I. L. R., 22 Cal. 77.

first portion of section 155, but the latter portion of section 14 of the English Statute is wholly different, and is intended for an entirely different purpose from the latter portion of section 155 which provides for the nature of the decree. . . The first portion of section 155 is directly controlled by the second. . . If there should be no loss to the landlord, there should be no ejectment or claim for compensation, and if, as a matter of fact, the landlord does not lose any money by this use of the land apart from the removing of the property, the result would be that there would be no ejectment.[1]

In other words, the Indian and English Statutes are not *in pari materiâ*, and, excepting a verbal similarity between a portion of section 155 of the Indian Act and a portion of section 14 of the English Statute, they do not run on parallel lines. The English cases decided under 44 & 45 Vic., c. 41, therefore do not apply to cases arising under section 155 of the present Act.[1]

Section 155 has been thus explained by the High Court[1]:—

Exposition of section 155.

The section may be divided into three parts: The first part of the section deals with two classes of cases, *viz.*, a case where the tenant is using the land in such a manner as to render it unfit for the purposes of the tenancy; secondly, the case of a tenant committing a breach of the terms of the contract between him and the landlord, which renders him liable to ejectment. The plaintiffs' suit is not founded on clause (*b*) of the section; his suit is based upon clause (*a*), that is, that, in consequence of his building these structures, he has rendered the land unfit for the purposes of the tenancy, and that is what is set forth in para. 9 of the plaint. Then the section describes how the landlord should proceed in order, either to have the lands brought back into the original condition in which they were, or to get relief for the breach of the conditions of the contract: It prescribes that he should serve a notice on the tenant specifying the precise and particular misuse of the land under clause (*a*), or the breach under clause (*b*); and, if these two acts are capable of being remedied, requiring him to remedy the same; and, in any case, asking him to pay reasonable compensation for either of

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[1] *Pershad Singh* v. *Ram Pertab Roy* [1894], I. L. R., 22 Cal. 77 (at pp. 81, 82, 85).

these acts under clause (*a*) or clause (*b*). Then the section goes on to provide that, if the tenant fails to comply with the demand within a reasonable time, namely, with the requisition asking him to remedy the breach or to pay compensation, the landlord would be entitled to bring a suit, the procedure for which is laid down further in sub-sections (*2*), (*3*), and (*4*). Upon such a suit being brought, if the conditions precedent have been complied with, the Court has the power to make a decree in the following way, namely, it may make a decree declaring the amount of compensation reasonably payable to the landlord, and declaring whether, in the opinion of the Court, the misuse or breach is capable of being remedied. If it is capable of being remedied, the Court is to declare and direct that the defendant should remedy the same. In the other case, the landlord would be entitled only to compensation. Sub-section (*4*) further provides that, "if the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed." The result, therefore, is, that, if the tenant pays the compensation for which he has been declared liable, he cannot be ejected; if the misuse or breach is capable of being remedied, and he does not comply with the injunction of the Court to remedy it, he is liable to be ejected, and, if he fails to pay the compensation awarded, he is of course liable also to ejectment; but, where he pays the compensation, or where the act is capable of being remedied, and he has remedied it, there is no ejectment. It seems to me, looking at the scope of the section and the character of the Tenancy Act, which covers all disputes between landlords and tenants, that any action of the landlord must proceed under, and be governed by the rules laid down by the Legislature in, the Tenancy Act.[1]

When the suit is really for ejectment, and the plaintiff gives notice for ejectment, and asks for ejectment, then, if there are other prayers in the plaint, they must be regarded as merely ancillary to the prayer for ejectment. And, in order to maintain the action, there must be a demand for compensation[2]. **Demand for compensation.**

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[1] *Pershad Singh* v. *Ram Pertab Roy* [1894], I. L. R., 22 Cal. 77 (at pp. 84, 85)

[2] *Ibid.* For the rule framed by the Local Government for service of notice under s. 155, *see* Rule 38 in Chapter V. of the Government Rules in Appendix V. to this work, *infra.*

Where a landlord served a notice on a tenant, calling upon him to fill up an excavation which the latter had made, or to pay damages, or, failing either, to quit the land, it was *held*[1] by the High Court that the notice was good, notwithstanding that the demand for compensation was made in the alternative.

Limitation for ejectment-suits.

It has been *held*[2] that a suit brought under section 25, clause (*a*), and section 155 of the Bengal Tenancy Act, for the ejectment of a tenant and the removal of trees planted by him on land leased out for agricultural purposes, is governed by article 32, Schedule II. of the Limitation Act.[3] In the case referred to, the learned Judges expressed themselves in the following terms:—

We notice that the Legislature, in enacting the Bengal Tenancy Act, provided one year's limitation for a suit to eject a *raiyat* on account of a breach of condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach; that is to say, for a suit under clause (*b*) of section 25 of the Act. They omitted to provide in that Act any limitation for a suit under clause (*a*) of that section, and they may possibly have considered that the general law which provides two years' limitation sufficiently dealt with that case. If it were otherwise, there would be an extraordinary difference between the periods provided in the one case for a suit where there is a written contract, and in the other for a suit of a similar nature where there is no written contract. Moreover, apart from the words of the section, it is obvious that, in a case of this kind, one would expect to find the Legislature fixing a comparatively short period of limitation, as great hardship might be done to a tenant if his landlord were to stand by and take no steps until close upon the expiration of a long period of limitation.

We have been to some extent pressed by two decisions by Division Benches of this Court: The first is the decision in the case of *Keddarnath Nag* v. *Khettur Pal Sritirutna*,[4] and the second that of *Gunesh*

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[1] *Boidya Nath Panday* v *Ghisu Mandul* [1903], I. L. R., 30 Cal. 1053.

[2] *Soman Gope* v. *Raghubir Ojha* [1896], I. L R., 24 Cal. 160; s. c., 1 C. W. N 223.

[3] *I e.*, Act XV. of 1877. The corresponding reference in the present Limitation Act (IX of 1908) is art. 32 of the First Schedule.

[4] [1880], I. L. R, 6 Cal. 34.

Dass v. *Gondour Koormi.*[1] In neither of those cases is any reason given for the conclusion at which the Court arrived that article 32 was inapplicable. Moreover, those cases are not cases under the Bengal Tenancy Act, or cases exactly of the class to which the present case belongs.

In a suit brought by the landlord against the tenant under section 155 for ejectment and compensation, the plaintiff alleged that the defendant had excavated a tank on the land, rendering the land unfit for the purposes of the tenancy, and he prayed that the defendant might be directed to fill up the tank and to pay damages, failing which the Court might award *khas* possession of the land to the plaintiff. The defendant urged (*inter alia*) that the suit was barred by limitation, inasmuch as it was brought more than two years after the date of the excavation of the tank. The lower Courts overruled the objection of the defendant, being of opinion that the suit was governed by article 120 of Schedule II. of the Limitation Act (*now* article 120, First Schedule, Act IX., 1908), which provides a period of six years. They accordingly decreed the plaintiff's suit. On appeal to the High Court, the question, whether article 32, as urged by the defendant, or article 120 as contended by the plaintiff, applied to the case, was referred to a Full Bench.[2] The Chief Justice, in delivering judgment, expressed himself as follows:—

Act XV, 1877.

The primary relief sought was in effect a mandatory injunction directing the defendant to fill up the tank in question, and to pay the plaintiff compensation for his alleged wrongful act; the secondary relief was for ejectment. We say secondary, for the ejectment was not to follow, and could not follow, save upon failure of the defendant to fill up the tank and make the compensation: it was contingent on that failure. For the tort complained of, the plaintiff had three remedies, (1) damages, (2) a mandatory injunction, and (3) ejectment, contingent upon the tenant not complying with certain conditions. This being the nature of his suit, under which article of the Limitation Act does

[1] [1882], I. L. R., 9 Cal 147.

[2] *Sharoop Dass Mondal* v. *Joggessur Roy Chowdhry* [1899], I. L. R., 26 Cal. 564: s. c., 3 C. W. N. 464.

the case come? If under article 32, the plaintiff is barred; if under article 120, he is not.

Article 32 is as follows: "Against one who, having a right to use property for specific purposes, perverts it to other purposes." As a general principle in construing this Act of the Legislature, we ought not to regard a case as coming under article 120 unless clearly satisfied that it does not come under one of the many articles dealing with specific cases. Further, if there be two articles which may cover the case, the one, however more general, and the other more particular or specific, as a principle of construction, the more particular and specific article ought to be regarded as the one governing the case. It cannot be successfully contended that, reading the language used according to its usual and ordinary acceptance, the words of article 32 are not sufficiently wide to cover the present case. The case is clearly within the words of the article; it is the precise case provided for by the article. The defendant is one who, having a right to use the property demised to him for agricultural purposes, has perverted it to another purpose, *viz.*, that of a tank. Upon which principle, then, can we properly say that the article cannot apply? . . . . . .

It is contended for the respondent, and this was the stress of his contention, that this is an action based upon, or framed under, section 155 of the Bengal Tenancy Act, 1885, and that, as that Act was not in existence when the Limitation Act of 1877 was passed, the Legislature could not have intended that article 32 of the latter Act should apply to cases framed under the provisions of the former Act.

This appears to us a fallacy. Suits against a tenant for perverting property to purposes other than those for which he had the right to use it were well known before the Bengal Tenancy Act of 1885, though, before that Act, there might have been no right to eject for such perversion independent of contract. Section 155 creates no fresh class of suit: it affords no fresh cause of action; it only provides that, in ejectment-suits, a tenant may obtain relief against forfeiture on certain terms.

Article 1 of Schedule III. to this Act provides a year as the period of limitation for a suit to eject any tenure-holder or *raiyat* on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach. And the

limitation is to run from the date of such breach. The difference between the language of this article and that of clause (*b*) of section 155 is noticeable. It would seem that this difference is not merely accidental, and that clause (*b*) of section 155 is general in character, and relates to the breach of a condition in a contract under which, although the penalty is not expressly provided for, the tenant is otherwise liable to ejectment. If this be the intention, it must be admitted that it is not very clearly expressed. According to one ruling[1] the period of limitation runs from the time of the landlord's knowledge of the misuse or breach complained of. This appears to ignore the provisions as to limitation set out in column 3 of article 1 of Schedule III., *post*.

Clause (*b*) of section 155.

In order to understand the policy of section 155, it is useful to keep in view the English Law on the subject of waste or improper user, which is thus stated in Woodfall's Law of Landlord and Tenant :—

Waste in English Law.

Waste (vastum) is defined to be a spoil or destruction to houses, gardens, trees, or other corporeal hereditaments to the injury of the reversion or inheritance; and it has two divisions of great practical importance—voluntary waste and permissive waste. Voluntary waste is actual or commissive, as by pulling down houses, and altering their structure—the kind of damage which is sometimes provided against by express stipulation not to convert a house into a shop, &c. Permissive waste is a matter of negligence and omission only, as by suffering buildings to fall or not for want of necessary reparations—the kind of damage which, where the contract of tenancy is in writing, is almost invariably provided against by express agreement to repair. It is not waste to omit to perform a covenant to put the demised premises into such repair as A. B. had previously put them into.[2] The action for waste can only lie for that which would be waste if there were no stipulation respecting it.[3]

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[1] *Gobinda Chundra Basu* v. *Kamisudin* [1905], 9 C. W. N. ccxlvi.
[2] *Jones* v. *Hill* [1817], Taunt., 392.
[3] Woodfall's Landlord and Tenant, 17th Ed., 679.

But there is another kind of user which, instead of damaging the property, improves it:—

Meliorating or ameliorating waste is such voluntary waste as improves the demised premises, as where a tenant puts a new front to his house: in respect of such waste, it seems that, unless substantial damages be proved, the tenant will not be interfered with by injunction.[1]

Voluntary waste chiefly consists in felling timber trees, pulling down houses, opening mines or pits, or changing the course of husbandry Whatever does a lasting damage to the freehold or inheritance is waste.[2]

If the tenant converts arable land into wood, or *è converso*, or meadow into arable, it is waste; for it not only changes the course of husbandry, but creates a difficulty in the proof of the title; and this would appear to be the case even where the act is done according to the custom of the country for the purpose of amelioration.[3]

Clause (*a*) of section 155.

Under clause (*a*) of section 155, in order to give the plaintiff a cause of action, there must be a conjunction of three different facts—(1) user of the land by the tenant, (2) in a manner which renders it unfit for (3) the purposes of the tenancy. The first question to ascertain is, what were the purposes for which the tenancy was created. In the second place, it has to be considered whether the tenant has used the land, and, if so, whether the manner in which he has used it renders it unfit for the purposes of the tenancy. Under the English Law, no injunction will be granted to restrain permissive waste.[4] Similarly, under the present Act, merely letting the land lie fallow or unused can hardly be said to be using the land in a manner which renders it unfit for the purposes of the tenancy. There must be actual user.

Again, there may be user which, instead of rendering the land unfit for the said purposes, may have the tendency to promote them. For example, a tenant, by opening irrigation channels, may so improve the land as to enhance considerably

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[1] Woodfall's Landlord and Tenant, 17 the Ed., 679.
[2] *Ibid*, p. 680.
[3] *Ibid*, p. 681.
[4] *Powys* v. *Blagrave* [1854], 1 DeG. M. & G. 448.

the productiveness of the land. This would fall under the head of ameliorating waste under the English Law. In dealing with cases under clause (*a*) of section 155 (*1*), therefore, attention should be directed to the question whether the user by the tenant has had the effect of permanently rendering the land unfit for the purposes of the tenancy. If a piece of land is let for cultivation, the building of a brick kiln on it, though only temporarily, may have the effect of damaging the property permanently.

In this connection it may be observed that a landlord is not *bound* to sue for ejectment under this section. He may content himself with the lesser remedy of a perpetual injunction.[1]

In that same case[1] the High Court held (in second appeal) that manufacture of indigo cakes from indigo plants is not an agricultural purpose; and that, where land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of such land renders it unfit for the "purposes of the tenancy," and the landlord is entitled to a permanent injunction restraining the tenant from erecting the factory. The High Court set aside the order of the District Judge, who had reversed a permanent injunction given by the Subordinate Judge. On appeal to the Privy Council, it was *held*[2] that the High Court was not justified in interfering with the order of the District Judge, and that the proposition of law laid down by the High Court was unsustainable, because the question, whether such a building conforms to the restrictions in section 23, must be considered with reference to the circumstances of each individual case, the size of the holding and of the area withdrawn from actual cultivation by the erection of the building, and the effect of such withdrawal upon the fitness of the holding, as a whole, for profitable cultivation.

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[1] *Surendra Narain Singh* v. *Hari Mohan Misser* [1903], I. L. R., 31 Cal. 301.
[2] *Hari Mohan Misser* v. *Surendra Narain Singh* [1907], I. L. R., 34 Cal. 718

It has been recently *held*[1] that the act of cultivating lands primarily let out for grazing does not expose the tenants thereof to forfeiture.

Loss of right of suit under section 155.

The right to institute a suit under section 155 may be lost under various circumstances: In England, the Courts of Law always lean against forfeitures, and therefore it has been stated that, whenever a landlord means to take advantage of any breach of covenant or condition, so that it would operate as a forfeiture of the lease, he must take care not to do anything which may be deemed an acknowledgment of the continuance of the tenancy, and so operate as a waiver of the forfeiture.[2] Merely lying by and witnessing the breach is no waiver; some positive act must be done.[3] The general rule is, that, if a lessor, or other person legally entitled to the reversion, knowing that a forfeiture has been incurred by the breach of any covenant or condition, does any act whereby he acknowledges the continuance of the tenancy at a later period, he thereby waives such forfeiture.[4] Thus, the following acts have been *held* to amount to a waiver: demand of rent accruing due after the forfeiture if the demand be absolute and unqualified;[5] acceptance of rent accruing due after the forfeiture.[6] Such an acceptance operates, as a matter of law, to waive all forfeitures then known to the lessor notwithstanding any protest on his part against such waiver;[7] but the subsequent receipt of rent due prior to the forfeiture is no waiver.[8] Action

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[1] *Latifur Rahman* v. *Forbes* [1910], 14 C. W. N. 372.

[2] Woodfall's Landlord and Tenant, 17th Ed., p. 300.

[3] *Doe d. Sheppard* v. *Allen* [1810], 3 Taunt. 78: 12 R. R. 597.

[4] *Dendy* v. *Nicholl* [1856], 4 C. B. (N. S.) 376: 27 L. J. (C. P.) 220; *Ward* v. *Day* [1863], 4 B & S. 337: 5 *id.* 359: 33 L. J. (Q. B.) 254.

[5] *Doe d. Nash* v *Birch* [1836], 1 M. & W. 402 (at p 408), *per* PARKE, *B.*

[6] *Deo d. Gatehouse* v. *Ress* [1838], 4 Bing. (N. C.) 384; *Doe d Griffith* v. *Pritchard* [1833], 5 B. & Ad. 765.

[7] *Croft* v. *Lumby* [1855], 5 E. & B. 648: 6 H L. Cas. 672: 27 L. J. (Q. B.) 321; *Davenport* v. *Reg.* [1877], L. R., 3 App. Cas. 115 (P. C.); *Strong* v. *Stringer* [1889], 61 L. T. 470 (*per* KEREWICH, *J.*).

[8] *Marsh* v. *Curteys* [1597], Cro. Eliz., 528; *Price* v. *Worwood* [1859], 4 H. & N. 512: 28 L. J. (Ex) 329.

for rent accruing due after the forfeiture,[1] or distress, or for rent,[2] also amount to waiver.

Similarly, it has been *decided*[3] in India that a landlord who has accepted rent from his tenant subsequently to the date of forfeiture must be held to have waived his right to ejectment. If he sues his tenant for rent due subsequently to the date of the forfeiture, he will similarly lose his right to eject.[4] But he can sue for ejectment on further breaches of the conditions of the lease.[5] Receipt of rent is not in itself a waiver of every previous forfeiture; it is only evidence of a waiver.[6]

Application of section 188.

In a suit brought by one of two joint owners of certain *nij-iote* land to eject a tenant after service of notice, to which the other co-sharer was made a *pro-formâ* defendant, as he refused to join in bringing the action, it appeared that the plaintiff had granted to the first defendant a *patta* for purposes of cultivation and improvement of her eight-anna share of the property in question. The plaintiff alleged that, in contravention of the terms of his lease, the defendant had, without her consent, cut trees, excavated a tank, and turned *dhosa* land into *jut* land, and otherwise rendered it unfit for the purposes of the tenancy. The defendant objected *inter aliâ* that, as the plaintiff's co-sharer had not joined in the notice and in bringing the suit, the suit, in view of the provisions of section 188 (*post*) of the Bengal Tenancy Act, was not maintainable. It was *held*[7] by the High Court that the action was not barred under that section, the suit being brought, "under the contract law, on breach of the conditions of a lease by the tenant." If there had been a single contract between the tenant on one side and the proprietors on the other,

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[1] *Dendy* v. *Nicholl* [1858], 4 C. B. (N. S.) 376: 27 L. J. (C. P.) 220.
[2] *Coteswerth* v. *Spokes* [1861], 10 C. B. (N. S.) 103: 30 L. J (C. P.) 220.
[3] *Kali Krishna Tagore* v. *Fasle Ali Chowdhry* [1883], I. L. R., 9 Cal. 843.
[4] *Jogeshuri Chowdhrain* v. *Mahomed Ebrahim* [1886], I. L. R., 14 Cal. 33.
[5] *Dulli Chand* v. *Meher Chand Sahoo* [1867], 8 W. R. 138.
[6] *Chunder Nath Misser* v. *Sirdar Khan* [1872], 18 W. R. 218.
[7] *Haripria Debi* v. *Ram Churn Myti* [1892], I. L. R., 19 Cal. 541.

it is submitted that the action would have to be brought by the landlords jointly.

Remedy where co-sharer refuses to join in suit for ejectment of tenant for breach of covenant.

It may be presumed that, if one co-sharer refuses to join in a suit for the ejectment of the tenant for an alleged breach of a covenant, he is either satisfied that there has been no breach, or that the act of the tenant is not injurious to him. Having regard to the language of the Judicial Committee in the case of *Watson* v. *Ram Chand Dutta*,[1] it would seem that the remedy in such a case of the co-sharer who complains of a breach is to seek a partition of the property with his other co-owner. In the case referred to, their Lordships said as follows :—

> It seems to their Lordships that, if there be two or more tenants-in-common, and one *A* be in actual occupation of part of the estate, and is engaged in cultivating that part in a proper course of cultivation as if it was his separate property, and another tenant-in-common, *B*, attempts to come upon the said part for the purpose of carrying on operations there inconsistent with the course of cultivation in which *A* is engaged, and the profitable use by him of the said part, and *A* resists and prevents such entry, not in denial of *B's* title, but simply with the object of protecting himself in the profitable enjoyment of the land, such conduct on the part of *A* would not entitle *B* to a decree for joint possession. . . . . In India a large proportion of the lands, including many very large estates, is held in undivided shares, and, if one shareholder can restrain another from cultivating a portion of the estate in a proper and husband-like manner, the whole estate may, by means of cross-injunctions, have to remain altogether without cultivation until all the shareholders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected—a work which, in ordinary course, in large estates, would probably occupy a period including many seasons. In such a case, in a climate like that of India, land which had been brought into cultivation would probably become waste or jungle, and greatly deteriorated in value. In Bengal, the Courts of Justice, in cases where no specific rule exists, are to act according to justice, equity, and good conscience, and if, in a case of shaareholders holding lands in common, it would be found that one shareholder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent with the rule

[1] [1899], I. L. R., 18 Cal. 10 (P. C.).

above indicated to restrain him from proceeding with his work, or to allow any other shareholder to appropriate to himself the fruits of the other's labour or capital.

In another case[1] the Judicial Committee declared that property does not cease to be joint merely because it is used so as to produce more profit to one of the joint owners, who has incurred expenditure or risk for that purpose.

It follows that, joint property being used consistently with the continuance of the joint ownership and possession, without exclusion of the co-sharers who do not join in the work, there is no encroachment on the rights of any of them, as regards common enjoyment, so as to give ground for a suit.

The principle deducible from the above decisions has been stated as follows:—

When one sharer is holding possession of certain land, and deals with it in a particular way, and, in the ordinary course, if the other co-sharers are not satisfied with that dealing, or with that course of conduct, their proper remedy ie by partition. In a partition-suit, the rights of all the parties are adjudged upon a proper basis, and any loss or damage suffered by one set of partners is made good at the expense of the other.[2]

In the case[2] last mentioned, a silted-up tank had been leased by one set of co-sharers to certain lessees who had re-excavated and improved it at considerable expense. Upon a suit by the other co-sharers to obtain *khas* possession of the tank in respect of their share, it was *held* that they were not entitled to *khas* possession, but were entitled only to possession through the joint tenants by receipt of their share of the rent.

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[1] *Lachmeswar Singh* v. *Monowar Hossein* [1891], I. L. R., 19 Cal. 253 (P. C.); *Madan Mohun Shaha* v. *Rajab Ali* [1900], I. L. R., 28 Cal. 223 (AMEER ALI and BRETT, JJ.).

[2] *Madan Mohan Shaha* v. *Rajab Ali* [1900], I. L. R., 28 Cal. 223.

Allegation in written statement does not give rise to a cause of action.

It was also *held* in this case that an assertion or denial of a right in a written statement does not give rise to a cause of action. A cause of action must be antecedent to any allegation made in the pleadings. This was with reference to the contention of the appellant that, in *Watson & Co.* v. *Ram Chund Dutt*,[1] the Judicial Committee had *held* that, when one co-sharer exercises rights "not in denial of the right" of the other co-sharer, his act cannot be impugned by the latter; and that, as, in the case cited, there had been a denial of the plaintiff's right, the principle laid down by the Privy Council was not applicable.

Service-tenures.

The provisions of this section do not seem to apply to service-tenures, regarding which, *see* section 181, *post*.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every *raiyat* ejected from a holding:—

(*a*) When the *raiyat* has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land, and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment:

(*b*) When the *raiyat* has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he

[1] [1890], I. L. R., 18 Cal. 10: L. R., 17 I. A. 110.

shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value:

(*c*) But a *raiyat* shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage:

(*d*) If the landlord elects under this section to allow a *raiyat* to retain possession of the land, the *raiyat* shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Alteration made by section 156.

The effect of an order of ejectment under the old law (Bengal Act VIII. of 1869, section 53) was *held*[1] to be, not only to dispossess the *raiyat* of the land, but also to deprive him of the crop standing thereon, the object of the ejectment being to completely terminate the connection between the parties as landlord and tenant. Whether this view was wholly justified by the wording of the section is a question which need not be

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[1] *Durjan Mahton* v. *Wajid Hossein* [1879], I. L. R., 5 Cal 135.

discussed. The Legislature has deliberately altered the law applicable to cases of ejectment.[1] Non-occupancy *raiyats* are entitled to the benefits of this section (*see* section 4, page 80, *ante*).

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Principle.

Under section 157, the landlord, in a suit for the ejectment of a person who has come on the land without his consent. may, at his option, claim alternative relief that the defendant be declared liable to pay a fair and equitable rent, to be determined by the Court, for the land in his possession.

The section confined to agricultural lands.

This alternative relief, however, it has been *held*,[2] is confined to agricultural lands, occupation in respect of such lands giving rise to an implied tenancy. The section, therefore, does not apply to ferry tolls and other property of the like nature; nor to service-tenures, for which, *see* section 181, *post*.

Compensation in suit for rent of non-agricultural lands.

In a suit for rent, pure and simple, of other than agricultural lands, when no alternative claim is made for compensation for use and occupation, no decree can be made on the latter basis.[3]

Effect of denial by defendant of relationship of landlord and tenant.

The mere fact, that a suit for rent is dismissed in consequence of the denial by the defendant of the relationship of landlord and tenant between him and the plaintiff, does not

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[1] The provisions of s. 156 apply only where there is a decree to that effect.—*Ram Runjan Chakravarti* v. *Janki Nath Pal* [1900], 4 C. W. N. lixiv. *Compare* the observations of FIELD, *J.*, in *Jagut Chunder Roy* v. *Rup Chand Chango* [1882], I. L. R., 9 Cal. 48. When the holding is put up to sale, the standing crop passes to the purchaser unless specifically excepted by the notification of sale or a custom to the contrary has been proved.—*Afatoolla Sirdar* v. *Dwarka Nath Moitry* [1879], I. L. R., 4 Cal. 814.

[2] *Rachhea Singh* v. *Upendra Chandra Singh* [1899], I. L. R., 27 Cal. 239.

[3] *Surendra Narain Singh* v. *Bhai Lal Thakur* [1895], I. L. R., 22 Cal. 752; *Rachhea Singh* v. *Upendra Chandra Singh* [1891], above.

operate as *res judicata* in a subsequent suit for declaration of title and recovery of rent brought by the plaintiff, not only against the tenant, but also against the person whose title he had set up in the previous suit for rent.[1] In the latter suit, the plaintiff is entitled to claim the alternative relief provided in section 157.[1]

Who are trespassers?

Section 155, as has already been pointed out, relates to the ejectment of tenants who have made themselves liable, by any alleged conduct on their part, to an action of that character. Section 157 relates to suits against trespassers. Who are trespassers? Tenants inducted upon the land by any person in *de-facto* possession, although without title, are not trespassers.[2] *See* also section 186A, *post*, and the notes thereunder.

Tenancy, in this country, is created, not only by contract, but also by occupation of land, so far as agricultural lands are concerned.[3]

How tenancy commences in Bengal.

Here it is a very usual thing for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy in a great many districts in Bengal, commences in this way; and, where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent when the latter may choose to demand it. Thus the established usage of the country regards these parties as landlord and tenant; and, unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so although he may never have expressly acknowledged the landlord's right, or entered into any express contract with him for the payment of rent. If he chooses to

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[1] *Dwarka Nath Roy* v. *Ram Chand Aich* [1899], I. L. R., 26 Cal. 428 (F. B.); s. c., 3 C. W. N. 266.

[2] *Ramgut Panday* v. *Radha Pershad Singh* [1874], 22 W. R. 195; *Mohima Chunder Shaha* v. *Hasari Pramanik* [1889], I. L. R. 17 Cal. 45; *Binad Lal Pakrashi* v. *Kalu Pramanik* [1893], I. L. R., 20 Cal. 708 (F. B.); *Asim Sirdar* v. *Ram Lall Shaha* [1897], I. L. R., 25 Cal. 324. *Compare* also *Lukhee Kant Doss Chowdhry* v. *Sumeerooddee Luskar* [1874], 13 B. L. R. 243; s. c., 21 W. R. 208; *Ranee Lalun Monee* v. *Sona Monee Dabee* [1874], 22 W. R. 334; *Rani Surnomoyee* v. *Deno Nath Gir Sannyasee* [1883], I. L. R., 9 Cal. 908 where it was *held* that persons in use and occupation of land may be treated as tenants, and sued for rent.

[3] GARTH, *C. J.*, in the case last cited.

cultivate the *zamindar's* lands, and the *zamindar* lets him, there is an implied contract between them creating a relationship of landlord and tenant.[1]

Position of tenants established by landlords who were afterwards ousted as trespassers.

The possession of the land in question for the purpose of cultivating it was acquired a good many years ago by the defendant from the persons who, at that time, were in actual possession of the *zamindari* within which it was situated, and who were the only persons who could give possession of the lands of the *zamindari* to cultivators. It is not suggested that the defendants did not then obtain possession as tenants under the *bonâ-fide* belief of the title of their landlords; but, since then, it has been ascertained by a judgment of a Court of law that the *zamindari* did not belong to these persons, but to the plaintiffs; and the question is, whether, now that the plaintiffs have established their right to the *zamindari*, they can treat all cultivators who have been settled on the lands by the persons whom they have ousted from its possession as trespassers, and obtain *khas* possession of all the *raiyati* lands from them at any moment without any notice, and without any compensation, even for the crops on the land. I am of opinion that they cannot.[2]

Effect of receiving, or suing for, rent from trespasser.

Under the old law, the receiving of rent from a trespasser, or the suing him for rent, converted him into a tenant.[3] This principle, being founded on a well-recognized rule of equity, is applicable under the present enactment. But a mere statement of willingness on the part of the person occupying the land would not convert a trespasser into a tenant.[4]

Rights of other co-sharers where one of them purchases a holding which was held under them all.

Where one of the co-sharers of a joint *taluk*, in execution of a money-decree obtained against one of the common tenants of the *taluk*, purchases a non-transferable occupancy-holding, and, under such purchase, claims to hold possession of the lands thereof to the exclusion of the other co-sharers, the case does not fall within the principle laid down in *Watson & Co.* v. *Ram-*

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[1] *Nityanund Ghose* v. *Kissen Kishore* [1874], W. R., Sup. Vol. (Act X. Rulings), 82.

[2] *Binad Lal Pakrashi* v. *Kalu Pramanik* [1893], I. L. R., 20 Cal. 708 (F. B.). *See* also *Madhu* v. *Sabar Ali* [1910], 14 C. W N. 681

[3] *Cazee Syud Mahomed Azmul* v. *Chundee Lall Pandey* [1867], 7 W. R. 250; *Gudadhur Banerjee* v. *Khettur Mohun Surmah* [1867], 7 W. R. 460.

[4] *Lyons* v. *Betts* [1870], 13 W. R. 94.

chund Dutt,[1] and the other co-sharers are entitled to maintain a suit for joint possession of the said lands.[2]

Rights of mortgagee of occupancy-holding against one co-sharer landlord.

A co-sharer landlord who has purchased an occupancy-holding in execution of a money-decree against a mortgagor cannot resist a mortgagee's suit to enforce his mortgage on the ground that the holding was non-transferable, he himself being a purchaser without the consent of the whole body of landlords.[3]

Suit by purchaser of an estate at a revenue-sale for possession against under-tenant.

In another case,[4] where the plaintiff purchased an estate under the Revenue Sale Law (Act XI. of 1859), the effect of which was to set aside an under-tenure claimed by the defendants, and sued to obtain direct possession of the property acquired as aforesaid, it was *held* as follows:—

If the suits had been for partition or for exclusive possession of any specific portion of the disputed land, or if partition of the disputed land had been absolutely necessary for the success of the plaintiffs in these suits, then no doubt the proprietors of the other estates, to which the land in dispute partly appertains, would have been necessary parties, and the suits which are brought without making them parties would have been liable to be dismissed. But the suits are not for partition or for exclusive possession of any specific portion of the lands in dispute. Nor can it be said that a partition of the disputed lands among the different estates to which they appertain is absolutely necessary for the plaintiffs' success in these suits, and that the proprietors of the estates other than that purchased by the plaintiffs are necessary parties, when all that the plaintiffs really ask for (as will appear from paragraph 6 of the plaint) is, not direct or actual possession of the land, but indirect or constructive possession by receipt of rent to the extent of their share from the cultivating tenants upon a declaration that the intermediate tenure set up by the defendants has been cancelled by the sale for arrears of revenue.

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[1] [1890], I. L. R., 18 Cal. 10.

[2] *Dilbar Sardar* v. *Hosein Ali Bepari* [1899], I. L. R., 26 Cal. 553; *Kamal Kumari Chowdhurani* v. *Kiran Chandra Roy* [1898], 2 C. W. N. 229. This last case was distinguished in *Ghulam Mohiudin* v. *Khairan* [1904], I. L. R., 31 Cal. 786. *See* under s. 188, *post*.

[3] *Haro Chandra Poddar* v. *Umesh Chandra* [1910], 14 C. W. N. 71.

[4] *Kamal Kumari Chowdhurani* v. *Kiran Chandra Roy* [1898], 2 C. W. N. 229.—*See* f.-n. 2 (above).

If the land had been in the direct or actual possession of the defendants, then there might have been some difficulty in giving the plaintiffs in this case a decree for possession of their share, such possession being possible only, either upon some previous arrangement with the plaintiffs or their predecessors in interest, which, however, never existed, or upon a partition of the land, which, however, cannot be made in the absence of the proprietors of the other estates to which the land in dispute partially appertains. But that is not the case here. The land in dispute is alleged in the plaint (paragraph 6) to be in the occupation of cultivating *raiyats*, and the correctness of that allegation was not disputed in the argument before us. As against the defendants in this suit, a decree for possession of the land may therefore be given to the plaintiffs, to the extent of their share, such decree entitling them to realize rents from the cultivating tenants to the extent of that share, and being capable of execution under section 264[1] of the Code of Civil Procedure.

Whether co-sharer can bring a suit for ejectment without the conjunction of the other co-sharers.

Although one co-sharer may sue for his share of the rent a person in occupation of the land, treating him as tenant, it is doubtful whether a suit for ejectment can lie at his instance alone without the conjunction of the other co-sharers.[2] In the case just referred to[2] it was observed as follows:—

If the success of the plaintiffs, so far as this point is concerned, depended solely upon the provisions of section 157 of the Bengal Tenancy Act, there would have been a difficulty in the plaintiffs' way created by section 188 of that Act, which enacts that, "where two or more persons are joint landlords, anything which the landlord is under this Act *required or authorized* to do must be done either by both or all of those persons acting together, or by an agent authorized to act on behalf of both or all of them," and the present suit is brought, not by the entire body of landlords, nor by an agent authorized to act on behalf of them all, but by only some of them.

As the suit, however, was not for ejectment, the learned Judge proceeded to add:—

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[1] *I. e.*, of Act XIV., 1882; the corresponding reference is *now* to r. 36, O. XXI. (First Schedule), Act V of 1908. —*See* s. 158 of that Act.

[2] *Asim Sirdar* v. *Ram Lall Shaha* [1897], I. L. R., 25 Cal. 324. From the opinions expressed in *Ghulam Mohiudin* v. *Khairan* [1904], I. L. R., 31 Cal. 786, it would appear that the crucial question is, was the tenant let into possession by all the co-sharers in the *zamindari* or by *one* only without the consent of *all* the others. In the former case, one co-sharer cannot sue to eject the tenant; in the latter, he can.

But, quite independently of the provisions of section 157 of the Bengal Tenancy Act, according to the law as it has always been understood in this country, as will appear from the cases to which I have referred, the relationship of landlord and tenant has been held to exist, at any rate as regards agricultural lands, between the person who is the proprietor of such lands and the actual cultivator, when there is no intermediate tenure existing between the two.

158. (*1*) [Subject to the provisions of section 111,] the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters (namely) :—

Bengal Act I., 1907; E. B. Assam Act I., 1908.
Application to determine incidents of tenancy.

(*a*) The situation, quantity, and boundaries of the land;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(*2*) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV.* of the Code of Civil Proce-

* *Now* Order XXVI (First Schedule). Act V. of 1908.

dure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392* of the said Code.

* *i. e.* of Act XIV., 1882 (*now* Rule 9, Order XXVI, First Schedule.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

References.

Cf. section 10 of the North-Western Provinces Rent Act, 1881 (Act XII. of 1881) since repealed and re-enacted in amplified form in section 95 of the United Provinces Tenancy Act, 1901 (U. P. Act II. of 1901). *See* also section 111, *ante*, and the words inserted in it. It was found that some landlords rushed into the Civil Courts in Bhagalpur during the preparation of the record-of-rights in 1906, and then brought forward *ex-parte* orders in proceedings under section 158 as authoritative decisions as to status, etc., etc. The words added to sections 111 and 158 by the Amending Acts, 1907, 1908, were intended to put a stop to such tactics. Sections 90 to 92 (*ante*) should be referred to also.

Object of section 158.

The object of the present section is to enable the Court to ascertain, at the instance of the landlord or the tenant, what are the incidents of the existing arrangement between them, and not to enable the Court in effect to make a new contract for parties between whom no contract was in existence at and before the date of the application.[1] Where, therefore, the applicant alleged in his petition that the person in occupation of the land had obtained possession of the land by fraud, and attacked the validity of the lease upon which the opposite party based his title, it was *held*[2] that the application did not come under the purview of section 158:

The object of section 158 is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the

[1] *Debendro Kumar Bundopadhya* v. *Bhupendro Narain Dutt* [1891], I. L. R., 19 Cal. 182 (F. B.).

[2] *Peary Mohun Mukerji* v. *Ali Sheikh* [1892], I. L. R., 20 Cal. 249.

particulars referred to in clauses (*a*), (*c*), and (*d*) of the section. Though clause (*b*) does authorize the Court to determine the name and description of the tenant, this, we think, was not intended to, and does not, authorize the Court to decide conclusively disputes as to who is the tenant, or as to who is entitled to the occupation of the land. The section, in other words, does not empower the Court to decide disputes as to the right to possession of the land. It could not, in a proceeding under section 158 of the Act, pass a decree for possession; so that, if it were to decide such questions, it might declare one person entitled to possession, while another might ostensibly hold, and might continue to hold, actual and direct possession of the land.[1]

An issue regarding a dispute as to the existence of the relation of landlord and tenant between the parties in a proceeding under section 158 can only be decided collaterally, and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between them in a subsequent regular suit.[1]

Section 158 (*d*) lays down that a Court dealing with an application under section 158 is to determine the rent payable by the tenant "at the time of the application." It, therefore, could not have been intended that, in a case under this section, the Court should pass a decree for enhancement, which can ordinarily only take effect from the beginning of the agricultural year next following, or from that of the year next but one following the year in which the decree was passed.

It has been said that, when no settlement-proceedings are going on, an application under section 158 takes the place of an application under section 104 (*2*), in the course of which a Settlement Officer has power to enhance or reduce a tenant's rent. This is quite true; but, when settlement-proceedings are going on, the jurisdiction of the Civil Court is in abeyance (*see* section 111A), so that no enhancement-suit can then be instituted, and hence it is that the Settlement Officer is empowered to alter a tenant's rent. But an application under section 158 does not oust the jurisdiction of the Civil Court in respect of the alteration of a tenant's rent. It therefore seems to us that, if a landlord seeks to enhance his tenant's rent when no settlement-proceedings are going on,

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[1] *Peary Mohun Mukerji* v. *Ali Sheikh* [1892], I. L. R., 20 Cal. 249.

he must institute a suit for the purpose, and cannot do so by means of an application under section 158.[1]

Bar of jurisdiction of Civil Courts.

By the amendments introduced in 1907, 1908, the jurisdiction of the Civil Courts to accept applications under section 158 has been limited. *See* section 111, page 514, *ante.*

Transferability of holding.

The question, whether a holding is transferable or not, cannot be gone into in a proceeding under section 158.[2]

Scope of inquiry under sub-section (2).

In an inquiry directed under sub-section (*2*), the Revenue-officer should not endeavour to find out what may be the rents payable by *raiyats* holding lands of a similar description in the vicinity. The inquiry should be directed to finding out what rent was paid by the particular defendants or had previously been paid by them.[2]

Excess lands.

In a proceeding under section 158, the Court has no jurisdiction to assess additional rent for excess lands found to be in the occupation of the tenant, its function being limited to recording the existing rent payable by the tenant at the time of the application.[3]

Duty of the Court under the section

Under section 158, what the Court has to determine is the rent payable by the tenant at the time of the application, in other words, what the existing rent is, and not what the rent should be in consideration of the fact of the tenant being in possession of additional land:[4]

If the landlord wishes to apply to have additional rent assessed for any additional area that may be found to be in the tenants' possession, he can bring a suit under section 52 of the Bengal Tenancy Act for the purpose. But, in an application for the determination of the incidents of a tenancy, additional rent cannot be assessed.[5]

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1 *Rajeshwar Pershad Singh* v. *Burta Koer* [1894], I. L. R., 21 Cal. 807.
2 *Purna Rai* v. *Bunshidhur Singh* [1898], 3 C. W N 15.
3 *Sri Narain Thakur* v. *Rameswar Singh* [1901] 5 C. W. N. cciii.
4 *Srinarain Thakur* v. *Maharaja Sir Luchmeshwar Singh* [1901], 6 C. W. N. 592 *See* also *Debendro Kumar Bundopadhya* v *Bhupendro Narain Dutt* [1891] I. L. R., 10 Cal 182; and *Rajeshwar Pershad Singh* v. *Burta Koer* [1894], I L. R 21 Cal. 807.
5 *Sri Narain Thakur* v. *Luchmeshwar Singh* [1901], 6 C. W. N. 592.

No application by one of several joint landlords.

An application under section 158 of the Bengal Tenancy Act, 1885, cannot be made by one of several joint landlords. Section 188, *post*, of the Act requires that such an application should be made by all the landlords acting together, and it is not a sufficient compliance with its provisions to make the landlords, who refuse to join, parties to the proceedings under section 158.[1]

Application against several tenants.

Section 158 does not authorize one joint application for the purpose of determining the incidents of several tenancies, or one joint application against a number of tenants having separate and distinct holdings or tenures. The application contemplated by the section is in the nature of a suit against each tenant separately.[2] But the landlord or joint landlords may proceed in one application in respect of several tenancies held by the same tenant or set of tenants.[3]

Commissions how to be executed.

See page 196, *ante*, for the Board of Revenue's instructions as to the execution of commissions for local enquiries under section 158 (*2*).

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[1] *Moheeb Ali* v. *Ameer Rai* [1890], I. L. R., 17 Cal. 538.

[2] *Golap Chand Nowlakha* v. *Ashutosh Chatterjee* [1894], I. L. R., 21 Cal. 602.

[3] *Dijendra Nath Roy Chowdhry* v. *Soylendra Nath Roy Chowdhry* [1896], I. L. R., 24 Cal. 197 : s. c., 1 C. W. N. 236.

[CHAPTER XIIIA.

Benga Act I., 1907; E. B. Assam Act I, 1908.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE PUBLIC DEMANDS RECOVERY ACT, 1895.

Bengal Act I., 1895.

Recovery of arrears by the certificate procedure in certain areas.

158A. (*1*) Any landlord, whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained,

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Public Demands Recovery Act, 1895, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

Bengal Act I., 1895.

(*2*) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(*3*) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue-officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate Officer

Bengal Act I., 1895. under the Public Demands Recovery Act, 1895, for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in accordance with the provisions of sections 51 and 52[1] of the Code of Civil Procedure as to the verification of plaints; and there shall be payable, in respect of every such requisition, a court-fee of the same amount as is payable under Act VII., 1870. the Court Fees Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

(5) On receipt of such requisition, the Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, issue certificates in the form prescribed therefor for the recovery of the arrears alleged to be due,

and any such certificate shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court passed in a suit for the recovery of rent, and the provisions of Chapter XIV. shall, so far as may be practicable, be applicable to all proceedings for the execution of such certificate:

Provided that—

(a) no certificate shall be issued for the recovery of arrears of rent of a tenancy regarding

[1] *I. e.*, ss. 51 and 52 of Act XIV. of 1882, for which, *now* read rr. 14 and 15 of O. VI. (First Schedule) of Act V., 1908.

which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant in respect of the period during which, it is alleged in the requisition made under sub-section (*3*), the arrears of rent sought to be recovered have accrued; and,

(*b*) if, after the issue of a certificate, it is found that such a suit has been instituted in a Civil Court before the issue of the certificate, such certificate shall be cancelled.

(*6*) The following provisions of the Public Demands Recovery Act, 1895, shall, so far as they are applicable, apply to the proceedings for the execution of all certificates for the recovery of arrears of rent issued under sub-section (*5*), namely— Bengal Act I., 1895.

the proviso to sub-section (*1*) of section 7, and sections 10 to 17 (both inclusive), and 22 to 33 (both inclusive).

(*7*) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (*3*);

and, subject to the provisions of section 15 of the Public Demands Recovery Act, 1895, no tenant shall, after the issue of any certificate against him under sub-section (*3*), institute a suit in, or apply to, a Civil Ditto.

Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was issued have accrued.

(*8*) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately, and, where the Revenue-officer issues a certificate on the requisition of one or more such co-sharer landlords, he shall, at the same time, issue to each of the remaining co-sharer landlords a copy of such certificate.]

Principle. This new Chapter introduces into the Rent Law of Bengal a novel principle. Some criticisms on it are to be found on page 33 of the Introduction (*ante*). As no scheme for the maintenance of records-of-rights has as yet been adopted, this Chapter is still a dead letter. The Annual Land Revenue Administration Reports show that several landlords have made applications for the introduction of this summary system in their estates, but, so far, it has not been introduced anywhere.

CHAPTER XIV.[1]

SALE FOR ARREARS UNDER DECREE.

Passing of tenure or holding sold in execution of decree.—Bengal Act I., 1907; E. B. Assam Act I., 1908.

[158B. (*1*) Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, or of a decree for damages under section 186A, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser, provided that the decree in execution of which it has been sold has been obtained by—

(*a*) a sole landlord; or

(*b*) the entire body of landlords; or

(*c*) one or more co-sharer landlords, who has or have sued for the rent due to all the co-sharers in respect of the entire tenure or holding, and made all the remaining co-sharers parties-defendant to the suit.

(*2*) When one or more co-sharer landlords, having obtained a decree in a suit framed under sub-section (*1*), or under section 148A, applies or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.]

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[1] This Chapter has been extended to the districts of Cuttack, Puri, and Balasore (January, 1907).

Object.

This new section (158B) was added to set aside a ruling,[1] and to provide that the tenure or holding shall pass to the purchaser at a sale in execution of a decree passed under section 148A at the suit of one co-sharer.

General powers of purchaser as to avoidance of incumbrances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances:"

Provided as follows:—

(*a*) A registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf:

(*b*) The power to annul shall be exercisable only in manner by this Chapter directed.

Principle.

This Chapter deals with the sale of tenures or holdings in execution of decrees for arrears of the same. It draws a broad distinction between what are called "protected interests" and what are called "incumbrances." Incumbrances are again divided into two classes, *viz.*, those which are registered and notified, and those which are not. The purchaser of a tenure or holding sold in execution of a decree for arrears due in respect thereof cannot interfere with "protected interests;" and he cannot annul the registered and notified incumbrances except as provided in the Act. "Protected interests" are defined and classified in

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[1] *Jogendra Nath Ghose* v. *Paban Chandra Ghose* [1904], 8 C. W. N. 472. *See* notes on s. 153 (p. 625, *ante*).

section 160, while "incumbrances" are dealt with in section 161, and their annulment in section 167, *post*.

Cf. section 16 of Bengal Act VIII. of 1865 and section 66 of Bengal Act VIII. of 1869. **References.**

The decisions under the old law were by no means uniform. For example, a sale in execution of a decree against the registered tenant was *held*[1] to pass the entire tenure, although other persons recognized by the *zamindar* as his tenants might be interested in the lease. Even where the sale-proceedings specified that the rights and interests of certain parties only were sold, it was *held*[2] that the tenure itself was sold, and all the co-sharers were jointly liable. Where the sale-certificate and sale-proclamation contained a clear and precise statement of what was actually sold, namely, not the tenure, but the right, title, and interest of the judgment-debtor, it was *held*[3] that the tenure did not pass under the sale, but only the right, title, and interest of the judgment-debtor. A sale of a tenure in the possession of a Hindu widow as the heiress of her husband was *held*[4] to pass the entire tenure, and the reversionary heir could not follow the estate after her death. But, where, in execution of a decree for arrears of rent, the right, title, and interest only of the judgment-debtor had been attached and sold under the Code of Civil Procedure (Act VIII. of 1859), the whole tenure was **Decisions under old law—when a sale passed the whole tenure;**

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[1] *Huree Churn Bose* v. *Meharoonissa Bibee* [1867], 7 W. R. 318; *Forbes* v. *Protap Singh* [1867], 7 W. R. 409; *Alimooddeen* v. *Sabir Khan* [1867], 8 W. R. 60; *Bhobo Tarinee Dossee* v. *Prosonomoye Dossee* [1868], 10 W. R. 304; *Fatima Khatun* v. *Collector of Tippera* [1870], 13 W. R. 433; *Sadan Chandra Bose* v. *Guru Charan Bose* [1871], 15 W. R. 99; *Golam Chunder Dey* v. *Nuddiar Chand Adheekaree* [1871], 16 W. R. 11; *Grish Chunder Ghose* v. *Kali Tara* [1876], 25 W. R. 395; *Bissessar Lal Sahoo* v. *Luchmessur Sing* [1879], 5 C. L. R. 477: L. R., 6 I. A. 233.

[2] *Alimooddeen* v. *Sabir Khan* [1867], 8 W. R. 60.

[3] *Dwarkanath* v. *Aloka Chunder Seal* [1883], I. L. R., 9 Cal. 641.

[4] *Tiluck Chunder Chuckerbutty* v. *Muddun Mohun Jogee* [1869], 12 W. R. 504; *Mohima Chunder Roy Chowdhry* v. *Ram Kishore Acharjee Chowdhry* [1875], 23 W. R. 174: 15 B. L. R. 142; *Baijun Doobey* v. *Brij Bhookun Lall Awusti* [1875], I. L R., 1 Cal. 133: 24 W. R. 306: L. R., 2 I. A 275; *Anund Moyee Dassee* v. *Mohindro Narain Dass* [1871], 15 W. R. 264.

Decisions under old law (*contd.*)—

held[1] not to have passed, as it would have done had the sale taken place in accordance with the provisions of section 59 of Bengal Act VIII. of 1869.

Decree obtained by fractional sharer.

Where rent-decrees were obtained by fractional sharers in a tenure, they were not entitled to bring the tenure itself to sale in execution for arrears of its own rent free from all incumbrances. All that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and they were in the position of ordinary creditors having no lien on the tenure.[2] In other words, the owner of a fractional share in a joint undivided estate had no lien on the tenure itself for his share of the rent, although such share was collected separately;[3] and consequently, if the rights and interest of the judgment-debtor had already been sold at a prior execution-sale, the purchaser took nothing.[4] In another case[5] it was laid down that,—

> where it is clear from the proceedings that what is sold, and intended to be sold, is the interest of the judgment-debtor only, the sale must be confined to that interest, although the decree-holder might have sold the whole tenure if he had taken proper steps to do so, or although the purchasers may have obtained possession of the whole tenure under the sale. But, if, on the other hand, it appears that the judgment-debtor has been sued *as representing the ownership of the whole tenure*, and that the sale, although purporting to be of the right and interest of the judgment-debtor only, was intended to be, and in justice and equity ought to operate as, a sale of the tenure, the whole tenure then must be considered as having

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[1] *Doolar Chand Sahoo* v. *Lalla Chabeel Chand* [1878], L. R., 6 I. A. 471; 3 C. L. R. 561.

[2] *Mohendro Coomar Dutt* v. *Heera Mohun Coondoo* [1881], I. L. R., 7 Cal. 723; *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* [1885], I. L. R., 12 Cal 24. *See* also *Ramjeebun Chowdhry* v. *Peary Lall Mundul* [1865], 4 W R. (Act X) 30; *Mreetoonjoy Chowdhry* v. *Khettar Nath Roy* [1866], 5 W. R. (Act X.) 71; *Nund Lall Roy* v. *Gooroo Churn Bose* [1871], 15 W. R. 6; *Golam Chunder Dey* v. *Nuddiar Chand Adheekaree* [1871], 16 W. R. 1; *Meahjan* v. *Karrunamayi Debi* [1871], 8 B. L. R. 1.

[3] *Bhuba Nath Roy Chowdhry* v. *Durga Prosunno Ghose* [1889], I. L. R., 16 Cal. 326.

[4] *Dowlut Ghasi Chowdhry* v. *Munwar* [1871], 15 W. R 341; *Girish Chunder Mitter* v. *Jhaku* [1872], 17 W. R. 352: 12 B. L. R. 488 (note).

[5] *Jeolal Singh* v. *Gunga Pershad* [1884], I. L. R., 10 Cal. 996.

passed by the sale. And, if the question is a doubtful one on the face of the proceedings, or one part of those proceedings may appear inconsistent with another, the Court must look to the substance of the matter, and not the form or language of the proceedings.

Decree obtained by fractional sharer under the present Act.

The views just expressed have been followed in a case[1] relating to a tenure which arose under the present Act. The facts found in that case were as follows:—

The plaintiffs and the first defendant were co-tenants of a share in a certain *shikmi taluk*, the name of the first defendant alone being registered in respect of the share in the *zamindar's serishta*. The other shareholders in the *taluk* had opened separate accounts with the *zamindar*. The third and fourth defendants, who were fractional share-holders in the *zamindari*, sued the first defendant alone for the entire rent due in respect of that *taluk* for the years 1298 and 1299, and obtained a decree in execution of which the share in question was brought to sale, and purchased by the second defendant on the 11th December 1894.

The plaintiffs thereupon sued to set aside the sale upon the ground, *inter aliâ*, that all that could, according to law, pass to the purchaser by the sale of the 11th December, was the interest in the *taluk* of the first defendant. The High Court *held*[2] that the sale could not be set aside—

at the suit of persons who admittedly were liable for the rent decreed against the first defendant, and who..... were duly represented, as between themselves and their landlord, by the first defendant, not only *qua* the lease, but also in all the proceedings taken by the landlord to secure the recovery of the rent—persons, moreover, who make no offer, but take their stand simply on what they assert to be their legal right.....

The reason for the decision is, that, as the law required tenants to register their names in the landlord's office, unregistered co-owners of a tenure, by their omitting to have their names registered, must be taken to have acquiesced in the registered tenant representing them in their dealings

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[1] *Nitayi Behari Saha Pramanick* v. *Hari Govinda Saha* [1899], I. L. R., 26 Cal. 677. *See* also *Tara Lal Singh* v. *Sarobar Singh* [1889], I. L. R., 27 Cal. 407 (P. C.), where the attachment was under Bengal Act VIII. of 1869.

[2] *Netayi Behari Saha Pramanick* v. *Hari Govinda Saha* [1899], I. L. R., 26 Cal. 679.

with the landlord; that, in a suit for rent against the registered tenant, he must be taken to have been sued as representing the ownership of the whole tenure; and that a sale in execution of the decree obtained in such a suit, though in terms only a sale of the right, title, and interest of the judgment-debtor, must be held really to pass the right, title, and interest, not only of the registered tenant, but also of the unregistered co-owners whom he represents.[1]

In a subsequent case[2] in which the sale of a *raiyati* holding was involved, it was *held* that the sale of a *jote* in execution of a decree for rent does not pass the interest of co-sharing tenants whose names are not registered in the landlord's *sherista*.

The case just cited[1] was distinguished on the ground that, in it, a tenure was involved, and section 15 (page 107, *ante*) requires that names of co-sharers should be reported to the landlord.

These and many previous cases were recently discussed in *Jagattara Dassi* v. *Daulati Bewa*,[3] and it was *held* that the language used in *Ashok Bhuiyan* v. *Karim Bepari*[2] had been given a wider significance than had been intended, and that it meant merely—

that a landlord is not justified in treating the registered tenant of a *raiyati* holding as the sole tenant merely because his co-sharers in the holding are not registered..... There is no necessary implication that the principle cannot apply to a *raiyati* holding. There is nothing in the case that prevents the whole body of tenants of a *raiyati* holding electing to treat one of their number as their representative in their dealings with the landlord..... The question is always one of *fact*, whether the recorded tenant represents the holding or not.

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[1] *Nitayi Behari Saha Pramanick* v. *Hari Govinda Saha* [1899], I. L. R., 26 Cal. 677 (*see* f.-n. 1, p. 675, *supra*)

[2] *Ashok Bhuiyan* v. *Karim Bepari* [1905], 9 C. W. N. 843.

[3] Case decided in June 1909; reported [1910] in I. L. R., 37 Cal. 75, alluding to *Mati Lal Poddar* v. *Nripenda Nath* [1897], 2 C. W. N. 172; *Ananda Kumar* v. *Hari Dass Haldar* [1900], I. L. R., 27 Cal. 545; *Rupram* v. *Iswar Namasudra* [1902], 6 C. W. N. 302; *Rajani Kanta* v. *Usir Bibi* [1902], 7 C. W. N. 170; *Apong Mollah* v. *Kulsumanissa* [1905], 10 C. W. N. 176.

It was also pointed out that there is little, if any, distinction between tenures and *raiyati* holdings in this connection under this Act; also that it is no longer compulsory for a *zamindar* to register the name of any tenant in his *sherista*; and that a suit to compel registration of his name cannot be maintained[1] by a tenant under this Act, or under the *Patni* Regulation (VIII. of 1819) or any other Statute.

Sale of share of tenure under Bengal Act VIII. of 1869.

Under section 64 of Bengal Act VIII. of 1869, a share of an under-tenure could be sold. Although the purchaser of a share of a tenure did not obtain the property free from incumbrances,[2] he was held[3] to acquire, under section 64 of Bengal Act VIII. of 1869, the judgment-debtor's rights and interests, and to become jointly liable for the rent with the other under-tenants.[4]

Sale of share of tenure or holding under present law.

Under this Act, as it was prior to the Amending Acts of 1907 and 1908, the only question is, has the property been sold in respect of its own arrears? If it has, the entire tenure or holding passes subject to the reservations contained in section 159. But the decree must be for the entire rent, and in favour of the entire body of landlords. An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of his separate share is not such an attachment as is contemplated by section 170 of the Bengal Tenancy Act.[5] *A fortiori*, a sale under such a decree would pass, not the tenure or holding, but only the right, title, and interest of the judgment-debtor. Where landlords seek to take the benefit of this Act, they must act in concert; and, where one of several co-sharers in a *zamindari* thinks fit to pursue his remedies to recover his share of the rent, he must pursue them under the ordinary law of the country, and independently of the Tenancy Act.[5] A decree for rent obtained

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[1] *Jagattara Dassi* v. *Daulati Bewa* [1910], [I. L. R., 37 Cal 75 (following *Ambika Pershad* v. *Chowdhry Keshri Sahai* [1897], I. L. R., 24 Cal. 642).

[2] *Reily* v. *Hur Chunder Ghose* [1883], I. L. R., 9 Cal. 722.

[3] *Ahsanulla Khan Bahadur* v. *Rajendra Chandra Rai* [1885], I. L. R., 12 Cal. 464.

[4] *Gobind Chunder Roy* v. *Ram Chunder Chowdhry* [1874], 22 W. R. 421.

[5] *Beni Madhub Roy* v. *Jaod Ali Sirkar* [1890], I. L. R., 17 Cal. 390 (F. B.).

by some of certain co-sharer landlords, and not by the whole body of them, is not a decree under the Act.[1]

Changes in the law resulted on Bengal Act I., 1907; & E. B Assam Act I., 1908.

But the law on this point has been changed by the Amending Acts of 1907 and 1908 [*see* the notes to sections 65 (page 311), 148A (page 619), and 158B (page 671), *ante*]. Moreover their Lordships of the Privy Council have laid down[2] that an agreement, express or implied, may establish the right to sue separately for the shares of rent receivable by the separate shareholders; and that such an agreement merely affects the right to sue separately for rent, and in no other respect modifies the terms of the holding. It follows that the right to bring the tenure to sale for arrears of rent remains intact, and also the right of one sharer to sue for the whole rent due making his co-sharers defendants when they will not join as plaintiffs. Such a suit is properly framed under this Act.[2] This has been followed—in recent case.[3]

Tenure or holding saleable for arrears only once

Where a tenure or holding has once been sold in execution of a decree for arrears of rent due in respect thereof, it cannot be put up to sale again in execution of another decree for arrears. The purchaser at the first sale acquires it free of all liability created upon it by the default of the previous holder.[4] The charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein is transferred from the tenure to its sale-proceeds.[4] Nor, when a tenure has once been sold for its own arrears, can it again be put up to sale for the arrears due on account of a previous period.[5]

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[1] *Durga Charan Mandal* v. *Kali Prassana Sarkar* [1899], I. L. R., 26 Cal. 727: (s. c.) 3 C. W. N. 586; *Sadagar Sircar* v. *Krishna Chandra Nath* [1899], I. L. R., 26 Cal. 937; *Sita Nath Chatterjee* v. *Atmaram Kar* [1900], 4 C. W. N. 571.

[2] *Pramada Nath Roy* v. *Ramani Kanta Roy* [1907], I. L. R., 35 Cal. 331. followed in—

[3] *Mafizudin* v. *Asutosh* [1910], 14 C. W. N. 352.

[4] *Faes Rahman* v. *Ram Sukh Bajpai* [1893], I. L. R., 21 Cal. 169; *Ram Chunder Sadhu Khan* v. *Samir Gasi* [1892], I. L. R., 20 Cal. 25.

[5] *Luteefun* v. *Mean Jan* [1866], 6 W. R. 112; *Pran Gour Mozoomdar* v. *Himanta Kumari Debya* [1886], I. L. R., 2 Cal. 597.

Rights of purchaser if second sale made.

Where the landlord, having once sold the property in execution of his decree, puts it up again to sale, and another person purchases it without any title against the first purchaser, he (the subsequent purchaser) is nevertheless entitled in equity to recover, from the landlord-defendant, the purchase-money paid by him, without instituting a separate suit against him for the recovery of damages.[1]

A *ticcadar*, on the expiry of his lease, obtained a decree against a tenant for rent, which fell due during the pendency of his lease. In execution of this decree, the tenure was sold and purchased by *A*. The landlord obtained a decree for rent for subsequent years against the same tenant. In the proceedings in execution taken on the decree obtained by the *ticcadar*, the landlord decree-holder put in an application stating that he had obtained a decree for arrears of rent for later years. Subsequently the landlord took out execution of his decree, and had the tenure put up to sale. *A* then intervened objecting to the sale of the tenure; it was *held*[2] that, under section 65 of the Bengal Tenancy Act, rent being a first charge on the tenure, that first charge did not stand in favour of the *ticcadar* of the rent which fell due during the pendency of his lease, but it stood in favour of the landlord in possession for the rent which fell due afterwards, and that the *ticcadar*, in execution of his decree, could not sell the tenure itself so as to pass all rights in it to the auction-purchaser (*A*), and annul the first charge standing on it in favour of the landlord. The tenure itself was liable to sale under the decree obtained by the landlord against the tenant.

This view was not followed in subsequent cases,[3] and is now discredited.

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[1] *Ram Saran Poddar* v *Mahomed Latif* [1898], 3 C. W. N. 61.
[2] *Srimant Roy* v. *Mahadeo Mahata* [1904], I. L. R., 31 Cal. 550.
[3] *Khetrapal Sing* v. *Kritarthamayi Dasi* [1906], I. L. R., 33 Cal. 566; and *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal. 737.

Only one tenure can be dealt with at a time, under this chapter.

A landlord having the same tenant holding different tenures may institute one suit for the rents of all the tenures, but, having obtained a decree in such a suit, cannot cause the sale of all the tenures together free of incumbrances under the provisions of Chapter XIV. of the Bengal Tenancy Act. In order to take advantage of the special provisions relating to sales for arrears of rent, the landlord must cause the sale of each holding or tenure separately after having obtained a decree as regards the rent of such tenure or holding.[1]

Sale in execution of decree for road-cess.

Chapter XIV. of the present Act must be read with section 65 of the Act; and, having regard to the declaration in clause (*5*) of section 3 that "rent," as used in section 65, includes money recoverable as if it was rent, the sale of a tenure held in execution of a decree for road-cess passes the tenure free from all but registered and notified incumbrances within the meaning of section 161.[2] But, where the sale is in execution of a decree for road-cess against some only of the owners of the tenure, its effect is not to convey to the purchaser the whole tenure, but only the right, title, and interest of the particular persons against whom the decree has been obtained.[3] As already mentioned, it has been *held*[4] in the case of tenures that, where the suit is brought against one of the co-sharers as representing the others, or because the tenure is registered in his name, or where the attachment is in reality of the entire property, and is understood as such, the sale passes the right, title, and interest, not only of the person against whom the decree is obtained, but also of the other co-sharers.

Effect of sale in execution of decree against some heirs only.

But, where, after the death of the last recorded tenant, none of his heirs had his name recorded in the landlord's office, and the landlord had accepted rent from all of them, and afterwards sued

[1] *Hridayanath Das Choudhry* v. *Krishna Prasad Sircar* [1907], I. L. R., 34 Cal. 298.

[2] *Nobin Chand Nuskar* v. *Banse Nath Paramanick* [1894], I. L. R., 21 Cal. 722.

[3] *Mahanund Chuckerbutty* v. *Bani Madhub Chatterjee* [1896], I. L. R., 24 Cal. 27. *See* also *Uma Churn Bag* v. *Ajadannissa Bibee* [1885], I. L. R., 12 Cal. 430.

[4] *See* foot-note (2) on p. 675, *ante*.

some of them, and, in execution of his decree, proceeded to sell the *jama*, the sale thereunder was *held*[1] to pass only the right, title, and interest of the judgment-debtors, and not the entire *jama*. It made no difference as to the right of the plaintiffs to recover their share, whether the *jama* was a tenure or an occupancy-holding. If it was a holding, the heirs of the last recorded tenant were entitled to claim recognition of their status from the landlord.[1]

Sale in execution of mortgage-decree does not override the statutory charge for arrear of rent.

A sale of a tenure [or transferable holding] in execution of a mortgage-decree does not absolve it of the statutory charge created by section 65 (*ante*, page 305) for arrears of rent; the property passes to the purchaser subject to this charge, and can be sold in execution of a decree for rent which accrued due previously to the date on which the sale was confirmed.[2]

Rent is, by operation of law, the first charge on a tenure, and a person who purchases the same at an execution-sale must, in the absence of anything to denote the contrary, be taken to purchase it charged with the rent which is due in respect of it at the time of its purchase; and, there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase. So, where a plaintiff, in execution of a mortgage-decree, purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to the confirmation of sale, he cannot proceed against the mortgagor.

How far an order against the mortgagor of a tenure, made in the course of the execution-proceedings, would bind the mortgagee would, it is presumed, depend on the circumstances of the case. Ordinarily speaking, the proprietor of an estate cannot be

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[1] *Annada Kumar Naskar* v. *Hari Das Halder* [1900], I. L. R., 27 Cal. 545 4 C W. N. 608.

[2] *Srimati Moharanee Dasya* v. *Harendra Lal Ray* [1896], 1 C. W. N. 458.

said to represent the whole estate after he has mortgaged it; and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow or *shebait*, who are held to represent the estate so as to bind the reversioner or the succeeding *shebait*.

The mortgagee can always be ascertained; very often his interest in the estate may be much greater than that left in the mortgagor; and sometimes, as in the present case, where, after decree, it was no part of the mortgagor's interest to protect the incumbrance, the interests of the two are not identical. . . .

In the case referred to, the sale in satisfaction of the plaintiff's mortgage was not made subject to the rent-decree as a first charge.

Where a landlord got a collusive rent-decree against a tenant, and purchased the holding in execution thereof, the lien of a mortgagee under the tenant would subsist on the land, and he would have the same rights against the landlord as against the mortgagor.[2]

Division of a tenure

When a landlord and tenure-holders have divided a tenure by mutual agreement, each of the divided shares must be regarded as an entire tenure.[3]

Difference between sale held under valid decree and sale held under invalid decree.

The mere fact, that a decree is set aside on appeal or on review, is no ground for setting aside a sale held *bonâ fide* under a valid and subsisting decree.[4] If a Court ordering a sale in execution of a decree has jurisdiction, a purchaser of the property sold is not bound to inquire into the correctness of the order for execution any more than he is, in an ordinary case, bound to inquire into the correctness of the judgment upon which the

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[1] *Soshi Bhusun Guha* v. *Gogan Chunder Shaha* [1894], I L. R., 22 Cal. 364.
[2] *Ram Saran* v. *Ram Prakash* [1905], I. L. R., 32 Cal. 283.
[3] *Gopi Nath Biswas* v. *Radha Shyam Poddar* [1900], 5 C. W. N. lxxx.
[4] *Mothura Mohun Ghose Mondul* v. *Akhoy Kumar Mitter* [1888], I. L. R., 15 Cal 557; *Jan Ali* v. *Jan Ali Chowdhry* [1868], 10 W. R. 154: 1 B. L. R. (A. C.) 56; *Pearee Monee Dossee* v. *The Collector of Beerbhoom* [1867], 8 W. R. 300.

execution issues.[1] But, where the sale in execution of a decree is vitiated by the circumstance of the decree being, at the time of sale, barred by limitation,[2] or where it is found that it was made by a Court without jurisdiction,[3] it is void, and gives no title to the purchaser. In the earlier cases, it was *held*[4] that, if the decree was obtained by fraud, the sale was void, independently of any question whether the purchaser was a party to, or cognisant of, the fraud.

Similarly, if the money due under the decree had been deposited before the sale,[5] or the judgment-debtor had paid the decretal amount to the judgment-creditor out of Court before the sale, it was *held*[6] that a suit would lie to set aside the sale. But the tendency of the later decisions seems to be, that the plaintiff is not entitled to obtain the relief unless the auction-purchaser should be a party to the fraud.[7]

A purchaser of a jote at an auction-sale can annul incumbrances under this section even though he has not acquired an occupancy-right by that purchase, but only a bare *raiyati* holding without right of occupancy. A purchaser of a non-occupancy holding has a remedy under Chapter XIV., and is not obliged to fall back on section 49 (*ante*, page 242) for ejectment of an under-*raiyat* incumbrancer. Under section 160 (*g*) on the next page, even a non-occupancy *raiyat* may create a protected interest with his landlord's consent.[8]

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[1] *Rewa Mahton* v. *Ram Kishen Singh* [1886], I. L. R., 14 Cal. 18 (P. C.): s. c., L. R, 13 I. A. 106. *See* also *Chunder Kant Surmah* v. *Bissessur Surmah* [1867], 7 W. R. 312.

[2] *Golam Asgar* v. *Lukhimani Debi* [1820], 5 B. L. R. 68: 13 W. R. 273.

[3] *Jodunath Kundu* v. *Brajanath Kundu* [1870], 6 B L. R. (App.) 90.

[4] *Gunga Doss Dutt* v. *Ram Narain Ghose* [1867], B. L. R. (F. B), *Sup. Vol.*, 625; *Nilmani Burnick* v. *Puddo Lochan Chuckerbutty* [1866], B. L. R. (F. B.), *Sup. Vol.*, 379; *Ram Sunder Poramanick* v. *Prasanna Kumar Bose* [1866], B. L. R. (F. B.), *Sup. Vol.*, 382; *Butoolan* v. *Oseerun* [1867], 8 W. R 300.

[5] *Afsul Ali* v. *Gur Narain* [1866], 6 W. R. (Act X.) 59: B. L. R. (F. B.), *Sup. Vol.*, 519.

[6] *Pat Dasi* v. *Sharup Chand Mala* [1887], I. L R., 14 Cal. 376.

[7] *Rewa Mahton* v. *Ram Kishen Singh* [1886], I. L. R, 14 Cal. 18 (P. C.): s. c., L. R., 13 I A. 106.

[8] *Ram Lal Sukul* v. *Bhola Ghasi* [1910], 14 C. W. N. 814.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter :—

(*a*) Any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy *raiyat* to hold for five years at a rent fixed under Chapter VI. by a Court, or under Chapter X. by a Revenue-officer;

(*f*) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord, at whose instance the tenure or holding is sold, or his predecessor in title, has expressly, and in writing, given the tenant for the time being permission to create.

The first three clauses, (*a*), (*b*), and (*c*), are taken from section 37 of Act XI. of 1859 and section 12 of Bengal Act VII. of 1868. The interests referred to in clauses (*d*), (*f*), and (*g*) were protected by section 66 of Bengal Act VIII. of 1869. Clause (*e*) is new.[1] Origin.

Clause (*c*) must be read with section 167, sub-section (*4*), *post*. The clause corresponds with the 4th Exception in section 37 of Act XI. of 1859. In a case[2] under the old law, it was observed by the learned Judges that the benefit of that 4th Exception should be limited to improvements effected *bonâ fide*, and to permanent buildings erected, before the revenue-sale, and should not be conceded to anything subsequently constructed, or to anything which appeared to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it did not matter whether the improvements had been effected by the existing holder, or by some previous occupier. This view was followed in a case[3] under the present law, in which it has been *ruled* that a dwelling-house, to be exempted under section 37 of the Revenue-sale Law, must be a dwelling-house of a permanent character, and that mere huts would not come within that description. There is nothing in section 76 of this Act to indicate that the dwelling-house of an occupancy-*raiyat* must be of a temporary description only.[4] The protection relating to gardens is in accordance with the decisions under section 37 of Act XI. of 1859.[5] "The original character of the tenure does not affect its position" with regard to the protection provided by the law.[6] Clause (*c*).

It has been *held*[7] that a *raiyat* holding at fixed rates does *not* become a 'settled *raiyat*' after he has been in occupation Clause (*d*).

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[1] *See* s. 46, sub-s. (7), *ante*, p. 235.
[2] *Ajgar Ali* v *Asmut Ali* [1881], I. L. R., 8 Cal. 110.
[3] *Moker Ali* v. *Shyama Churn Doss* [1898], 3 C. W. N. lxiii.
[4] *Hari Kishore* v *Burada* [1904], I. L. R., 31 Cal 1014.
[5] *Bhago Bibee* v. *Ram Kant Roy Chowdhry* [1877], I. L. R., 3 Cal. 293; *Gobind Chundra Sen* v. *Joy Chundra Dass* [1885], I. L. R., 12 Cal. 327.
[6] *Gobind Chundra Sen* v. *Joy Chundra Dass*, supra.
[7] *Bhut Nath* v. *Surendra Nath* [1909], 13 C. W. N. 1025.

for twelve years, and thus acquire a right of occupancy; hence his interest is not a 'protected interest' within the meaning of clause (*d*) of this section.

It is submitted that this view is not consistent with section 20 (*1*), page 130, *ante*, and section 21 (*1*) and (*2*).

Clause (*g*).

A clause in a *patni* lease, to the effect that, if the *patnidar* should grant a *darpatni*, the *darpatnidar* shall act according to the terms of the *patni kabulyat*, does not amount to a permission to the *patnidar* to create a *darpatni* within the meaning of section 160, clause (*g*), of the Bengal Tenancy Act.[1]

Knowledge on the part of the propietor, of the creation of a *darpatni* and acceptance by him of the *patni* rent from the *darpatnidar* are not sufficient to constitute the *darpatni* a protected interest within the meaning of this section.[1]

Meaning of "incumbrance," and "registered and notified incumbrance."

161. For the purposes of this Chapter,—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest created by the tenant on his tenure or holding, or in limitation of his own interest therein, and not being a protected interest as defined in the last-foregoing section;

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months

[1] *Mahomed Kasim* v. *Nafar Chandra Pal* [1905], I L. R., 32 Cal 911.

before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

[(*c*) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 67, or damages awarded in lieu of interest under sub-section (*1*) of section 68.]

Bengal Act I., 1907; E B Assam Act I, 1908.

See sections 164, 165, 166, *post*.

References.

All rights or interests created by the tenant on his tenure or holding, which are not included in section 160, come under the present section.

Scope of section 161.

In one case[1] the Calcutta High Court has held that, where a tenant is holding his land in exchange with another, the arrangement amounts to an "incumbrance" within the meaning of section 161; a 'lease' is also an incumbrance, and the landlord is not entitled to eject the holder thereof without taking proper proceedings to annul the incumbrance as provided by law.[2] *See* section 167, *post*.

Holding land in exchange.

An incumbrance liable to be set aside under this section must be the creation of the tenant,[3] having an interest in a tenure or holding which would be voidable if such tenure or holding were sold. If the tenant pays into Court, under the provisions of section 171 (*post*), the amount of the decree, his lien on the property cannot be set aside by an auction-purchaser as an incumbrance.[3]

A mortgage arising under section 171 is not an "incumbrance" within the meaning of section 161.

Only "registered and notified" incumbrances are protected against annulment [*see* section 159, proviso (*a*), *ante*, page 672].

Mortgagee in possession.

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[1] *Gopendro Chunder Mitter* v. *Mokaddam Hossein* [1894], I. L. R., 21 Cal. 702; *Jogeshwar Mazumdar* v. *Abed Mahomed Sirkar* [1896], 3 C. W. N. 13.

[2] *Chundra Sahai* v. *Kolli Prosanno Chuckerbutty* [1895], I L. R., 23 Cal. 254.

[3] *Pasupati Mohapatra* v. *Narayani Dassi* [1897], I. L. R., 24 Cal. 537: s c., 1 C. W. N. 519.

The mere fact, that a mortgagee has been put into possession of the property on the basis of a usufructuary mortgage, will not give him protection unless the case comes under clause (*b*) of section 161.[1]

When a mortgagee has enforced his lien, and obtained a decree, the mortgage is no longer an incumbrance on the tenure.[2]

Notifying incumbrances to landlord.

As to the notifying of incumbrances to the landlord, *see* section 176, *post*.

A *darpatnidar* who deposits *patni* rent to save it from sale does not get a '*first* charge' on the *patni*.[3]

Clause (*c*) was added in 1907, 1908, to counteract the effect of some rulings that "interest" cannot be recovered as if it were rent. By the same Amending Acts, this Chapter (XIV.) was included in the definition of "rent" in section 3 (*5*), clause two (page 61, *ante*).

The interest of the transferees of portion of a *raiyati* holding at fixed rents (*vide* sections 17, 18, pages 109, 113, *ante*), of which transfer notice had been given to the landlord, is *not* an incumbrance that could be avoided by a purchaser at a rent-sale.[4]

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies, under *section 235** of the Code of Civil Procedure, for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate, and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same, and the total amount recoverable under the decree.

* *i. e.*, of Act XIV, 1882. The corresponding reference in Act V. of 1908 (the present Code) is rule 11 (2) of Order XXI. of the First Schedule: vide section 158 of Act V. of 1908.

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[1] *Nobin Chand Nyshar* v. *Banse Nath Paramanick* [1894], I. L. R., 21 Cal. 722.

[2] *Abhai Kumar Sur* v *Bijai Chand* [1902], I. L. R., 29 Cal. 813.

[3] *Maharaj Bahadur* v *Forbes* [1908], I. L. R., 35 Cal. 737.

[4] *Baistcb Charan Chowdhry* v. *Akhil Chandra Chowdhry* [1906], 11 C. W. N. 217. *See* also notes to s. 88, p. 396, *ante*.

The following rule has been made by the High Court:— Rule made by High Court.

Every person applying, under section 162 of the Bengal Tenancy Act (VIII. of 1885), for the simultaneous attachment and sale of a tenure or a holding of a *raiyat* holding at fixed rates, or applying only for the sale of such tenure or holding already under attachment, shall, in such application, specify the registered and notified incumbrances subject to which the tenure or holding is to be sold. Such specification shall be verified, in the manner prescribed by the Code of Civil Procedure for the verification of plaints, by the holder of the decree in execution of which the tenure or holding is to be sold, or by some other person (approved by the Court) if the Court is satisfied that he is acquainted with the facts mentioned in it.[1]

Order of attachment and proclamation of sale to be issued simultaneously.

163. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last-foregoing section, the Court shall, if, under section 245* of the said Code, it admits the application, and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287† of the said Code.

*I. e., of Act XIV., 1882 (the old Code), corresponding *now* to Order XXI. (First Schedule), rule 17, of Act V. of 1908 (the present Code).

†I. e., of Act XIV., 1882 (the old Code), corresponding *now* to Order XXI. (First Schedule), rules 66 and 70, of Act V. of 1908 (the new Code).

(*2*) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287† of the said Code, announce,—

(*a*) in the case of a tenure or a holding of a *raiyat* holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the

[1] *Calcutta Gazette*, 18th August 1886, Pt. I., p. 939, and High Court's General Rules and Circular Orders, Civil, p. 32.

decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and,

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

*Of Act XIV. of 1882 (the old Code), corresponding *now* to Order XXI., rule 67, of Act V. of 1908 (the present Code).

(*3*) The proclamation shall, besides being made in the manner prescribed by section 289* of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.[1]

*Of Act XIV. of 1882 (the old Code), corresponding *now* to Order XXI., rule 68, of Act V. of 1908 (the present Code).

(*4*) Notwithstanding anything contained in section 290* of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Principle.

The provisions of sub-section (*4*) are mandatory; a sale held before the expiry of thirty days is absolutely void.

Stay of execution of rent-decree, while appeal pending.

A rent-decree, which is sought to be executed against a tenure or holding, is a decree for money within the meaning of section 546 [*i. e.*, rule 6, Order XLI. (First Schedule) of the

[1] The proclamation referred to in s. 163, sub s. (*3*), must, in addition to the places prescribed in this section, and in s. 289 (*now* r. 67. O. XXI.) of the Code of Civil Procedure, be also published in the *mál kachahri* or rent-office of the estate, and at the local *thana*.—*Calcutta Gazette*, 3rd March 1886, Pt. I., p. 142.

present Code (Act V. of 1908)] of the Code of Civil Procedure (Act XIV. of 1882), and its execution is liable to be stayed until the disposal of any appeal which may be pending against the decree.[1]

Proclamation of sale.

When a tenure is advertised for sale in execution of a decree for arrears of rent, it is not necessary for the decree-holder to specify the rate of interest in the sale-proclamation.[2] The auction-purchaser of a *dar-patni* is bound to pay interest on arrears at the rate mentioned in the lease, if there is nothing unusual in the stipulation.

Where there was a stipulation in a lease that the lessee should pay a sum of ten rupees in default of delivery to the landlord of a certain quantity of molasses, it was *held*[2] that the stipulation was merely a personal covenant by the lessee; and that, the rent mentioned in the sale-proclamation not having included the sum in question, the auction-purchaser was not bound to pay the sum.

When a tenure or holding was sold with notice that it was still liable for arrears of rent prior to the date of sale, it was *held*[3] that the purchaser was liable for these back rents.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (*1*) When a tenure or a holding at fixed rates has been advertised for sale under the last-foregoing section, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

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[1] *Banku Behary Sanyal* v. *Syama Churn Bhuttacharjee* [1897], I. L. R., 25 Cal. 322.

[2] *Raj Narain Mitra* v. *Panna Chand* [1901], I. L. R., 30 Cal. 213: 7 C. W. N 203.

[3] *Haradhan* v. *Kartik Chandra* [1902], 6 C. W. N. 877.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Bidding must be actual.

"Bidding" in this section means a bid which either has been accepted or is open to acceptance, and does not include a bid which has been withdrawn before acceptance, and which has been cancelled by the bidder.[1]

Suit by auction-purchaser against cultivating tenants.

The purchaser at a sale under this section can maintain a suit against the cultivating tenants after serving a notice under section 167.[2]

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last-foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale, and make a fresh proclamation under section 289* of the Code of Civil Procedure announcing that the tenure or holding will be put up to auction and sold, with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and, upon that day, the tenure or holding shall be put up to auction, and sold with power to avoid all incumbrances.

* Of Act XIV. of 1882 (the old Code), corresponding *now* to Order XXI., rule 67, of Act V. of 1908 (the present Code).

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

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[1] Appeal from order No. 69 of 1887—*Nobo Comar Mookerjee* v. *Kissory Dassee*, decided by Petheram, *C.J.*, and Ghose, *J.*, on 30th May 1887 (unreported).

[2] *Mianjan* v. *Phuljan* [1907], 11 C. W. N. ccxlviii.

See notes on section 167, pages 695, etc., *infra*, *re* annulment of incumbrances. **Reference**

The provisions of section 165 are, in many respects, analogous to those of sections 13 and 14 of Act XI. of 1859. **Principle.**

The person who purchases property under this section is different from the person who claims to have a charge or incumbrance on it.[1]

A 16-anna proprietor holding a decree for the whole rent due in respect of a *mukarari* tenure is entitled by this section to sell the tenure in execution of the decree, although he recognized the fact that the tenants had subdivided the tenure, and although he chose to accept a decree making each of them separately liable for his own share of the rent.[2] **Right of 16-anna proprietor decree-holder under this section.**

In order to give power to the purchaser to avoid incumbrances, the property must be sold expressly with the power to avoid incumbrances, and there must be an order to that effect, and it must be notified in the sale-proclamation[3] [*see* section 163, sub-section (*2*), clause (*a*), *ante*, page 689]. **Procedure.**

The purchaser at a sale under section 164 can annul all incumbrances save and except such as are registered and notified incumbrances. But, when the sale takes place under section 165, *i. e.*, at an adjourned sale of a tenure or a holding-at-fixed-rates, the purchaser has the power to annul all incumbrances, including registered and notified incumbrances. **Difference between purchasers at sales under sections 164 and 165, respectively.**

The lien of a *dar-patnidar*, who has deposited *patni* rent to save the *patni* from sale, is annulled[4] by a sale under this section, **Annulment of *dar-patnidar's* lien by sale under the section.**

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[1] *Mastulla Mandal* v. *Jan Mamud Sha* [1900], I. L. R., 28 Cal. 221 (s. c.) 4 C. W. N. 735.

[2] *Surbo Lal* v. *J. M. Wilson* [1905], I. L. R., 32 Cal. 680 [explaining *Tarini Prasad Roy* v. *Narain Kumari Debi* (*see* s. 65, p. 316, *ante*, f.-n. 1)].

[3] This seems also to have been the view taken in *Goluk Chunder Das* v. *Ram Sunker Sutt* [1899], 4 C W. N. 268, although the question was not expressly decided. The lower Court, however, had held that in terms, and its judgment was affirmed.

[4] *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal. 737. *See* notes to s. 161, *ante*, pp. 636, etc.; and *Pasupati Mohapatra* v. *Narayani Dasi* [1897], I. L. R., 24 Cal. 537, cited under s. 171, *post*.

as such lien is not a "first charge," and is not a "registered and notified incumbrance," as defined in section 161.

Restriction of purchaser's power to annul certain subordinate interest.

The purchaser of a tenure at a rent-sale cannot annul a subordinate interest, leaving untouched a superior interest immediately subordinate to the interest purchased by him.[1]

Landlord's right to bring one suit for rents of different tenures held by one tenant.

A landlord having the same tenant holding different tenures may institute one suit for the rents of all the tenures; but, having obtained a decree in such a suit, he cannot cause the sale of all the tenures together free of incumbrances under this Chapter (XIV.). He must cause the sale of each tenure or holding separately after having obtained a decree for rent.[2]

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (*1*) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction, and sold with power to avoid all incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Principle.

Sections 164 and 165 deal with tenures and holdings at fixed rates. Section 166 provides for the sale of occupancy-holdings. *Cf.* section 163, sub-section (*2*), clause (*b*), *ante*, page 690. In the case of an occupancy-holding, the purchaser acquires it with power to avoid all incumbrances.[3] But the annulment can only be made under the provisions of section 167.

Procedure for annulling incumbrances under the foregoing sections.

167. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections, and desiring to annul the same, may, within one year from

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[1] *Mafizudin* v. *Asutosh* [1910], 14 C. W. N. 352.

[2] *Hridaynath Dass* v. *Krishna Prasad* [1907], I. L. R., 34 Cal. 298.

[3] But see the power given by s. 163 (*post*, p. 700) to the Local Government to direct that occupancy-holdings or any specific class of occupancy-holdings within any local area should be treated as tenures for the purposes of sale under this Chapter.

the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(*4*) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this Chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not, at the time the lease was granted, a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

See notes on section 159, *ante*. **Reference.**

Scope of section 167.

The section does not apply where the purchaser is the incumbrancer himself,[1] nor where only *part* of a tenure or holding is

[1] *Hem Chandra Chowdhury* v. *Tafassel Hossein* [1904], 8 C. W. N. 332.

sold.[1] A purchase by an incumbrancer under section 165 in execution of a rent-decree has the effect of extinguishing his lien.[2]

Purchaser must comply with the section.

The section only declares what a purchaser "having power to annul an incumbrance" may do. A sale with such a power does not *ipso facto* cancel the incumbrances.[3] If a purchaser desires to exercise that power, he must comply with the provisions of the section,[4] and serve notice of the annulment of the incumbrance within one year from the time at which he first becomes aware of it.[5] The Act confers a special privilege on the purchaser, and he is not entitled to that privilege unless he strictly complies with the provisions of the Act. It follows, therefore, that, when an application is made to serve the notice on a wrong person, it is of no effect.[6] A subsequent application, made after the expiry of one year, to serve the statutory notice on the right person, would be barred by limitation.[6]

Effect of service of notice when property is in the hands of a third person.

In one case,[7] the Calcutta High Court has held that service of the notice under section 167 alone has the effect of annulling an incumbrance; and that it would be effective even if the property was, at the time of the service, in the hands of somebody else, and not the purchaser. The correctness of the view expressed in that case, it is submitted, is open to question. Suppose the auction-purchaser, after service of notice, chooses to acquiesce in the incumbrance, what would be the effect of such acquiescence? No notice under this section (167) is necessary[8] for the annul-

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[1] *Ramkinker Biswas v. Akhil Chandra Chowdhry* [1907], 11 C. W. N. 350.

[2] *Mastulla Mandal* v. *Jan Mamud Sha* [1900], I. L. R., 28 Cal. 12.

[3] *Reni Prosad Sinha* v. *Rewal Lall* [1897], I. L. R., 24 Cal. 746.

[4] *Soshi Bhusun Guha* v. *Gogan Chunder Shaha* [1894], I. L. R., 22 Cal. 364; *Chunder Sakai* v. *Kalli Prosanno Chuckerbutty* [1895], I. L. R., 23 Cal. 254.

[5] *Gopi Nath Biswas* v. *Radha Shyam Poddar* [1900], 5 C. W. N. lxxx.

[6] *Nritya Gopal Hazra* v. *Golam Rasool* [1906], I. L. R., 28 Cal. 180.

[7] *Peari Lal Roy* v. *Moheswari Debi* [1898], I. L. R., 25 Cal. 551.

[8] *Piari Mohun Mukherji* v. *Badul Chandra* [1901], I. L. R., 28 Cal. 205 (distinguished in *Amirullah* v. *Nasir* [1907], I. L. R., 34 Cal. 104.

ment of a lease that is invalid under section 85 (*1*), page 373, *ante*.

Rulings under this section.

In a suit for possession after annulment of an under-tenure under section 167 of the Bengal Tenancy Act, absence of due service of notice on a person, who in the suit disclaimed all interest therein, cannot prejudice the plaintiff.

But, if the application for the issue of notice, against some of the persons jointly interested in the incumbrance, was not made within time, the whole suit must fail.[1]

The notice under section 167 must be served on the whole body of incumbrancers: otherwise it is bad.[2]

Where the position of the plaintiff is that of landlord and tenant combined, and the defendant, a sub-tenant, notwithstanding a notice served upon him under section 167 of the Bengal Tenancy Act, withheld possession from the plaintiff, the mesne-profits must be assessed on the value of the crops raised by the defendant, and not upon the basis of the rent which the rightful owner had been realizing from the tenants before dispossession.[3]

Where, after an occupancy-*raiyat* had sublet his holding, the plaintiff, his landlord, purchased the holding from him at a private sale, *held* that, although, by reason of such purchase, the occupancy-holding merged in the landlord's interest under section 22 of the Bengal Tenancy Act, and although, under the provisions of section 85 (*1*) of the Act, the sub-lessee had not, by reason of the sub-lease, acquired any right as against the landlord, the plaintiff, having acquired the occupancy-holding at a private sale, could not claim any higher right than the occupancy-holder himself had, and was not entitled to eject the sub-lessee without

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[1] *Delauney* v. *Rahamat Ali* [1905], I. L. R., 32 Cal. 710.

[2] *Srimati Khyantabati Dasi* v. *Kedar Nath Kaji* [1910], 14 C. W. N. cxxxviii.

[3] *Gopal Chandra Mandal* v. *Bhooban Mohon Chatterjee* [1903], I. L. R., 30 Cal. 536.

serving upon him a notice to quit under the provisions of section 49 of the Bengal Tenancy Act.[1]

Rulings (*contd.*).

Where an occupancy-holding, which had been mortgaged by the *raiyat* of the holding, was purchased by a person in execution of a decree for money obtained by him, and the purchaser again purchased it in execution of a rent-decree against the old tenant for arrears which had accrued previous to his first purchase, and annulled, by a notice under section 167, the mortgage of which he was aware at the time of his re-purchase, it was *held*[1] that the purchaser did not commit any fraud by re-purchasing the property, and was entitled to annul the mortgage; the mortgagor was not entitled to get a decree upon the mortgage making the holding liable for the mortgage-debt; and the purchaser was not bound as representative of the old tenant to pay off the decree for rent obtained by the landlord.

When a *zamindar*, after purchase of a *patni* under himself, annulled under this section a *darpatni*, it was *held*[3] that the effect of this was to vest the rights of the *patnidar* and *dar-patnidar* in the *zamindar*. 'Annulment' of the *dar-patnidari* right does not mean its extinction and destruction, but it means that the right to collect rents, formerly enjoyed by the *dar-patnidar*, vests directly in the *zamindar*.

Functions of Collector.

Limitation.

The functions of a Collector under section 167 are purely ministerial, and he has no power to allow an application made against a wrong person to be amended after the period of limita-

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[1] *Amirullah Mahomed* v *Nasir Mahomed* [1902], I. L. R., 34 Cal. 104. This replaces the earlier ruling between the same parties reported at I. L. R., 31 Cal. 932, which was withdrawn owing to want of service of notice on the heirs of one party, distinguishing *Piari Mohun* v. *Badul Chandra* [1901], I. L. R., 28 Cal. 205, in which case defendant resisted ejectment, because no notice under s. 167 was given; it was held that notice under s 167 was unnecessary, as the lease was invalid under s. 85 (*1*), and the benefit of s. 49 (*b*) was not claimed at all.

[2] *Surendra Mohon Singh* v. *Bansidhar Marwari* [1907], 12 C. W. N 114.

[3] *Manmatha Nath Mitter v. Rakhal Chandra Tewari* [1910], 14 C. W. N. 756 *See* also notes to s. 148 (*h*), *ante*, p. 609.

tion has expired.[1] A minor is not entitled to any extension of the period of limitation prescribed by this section.[2]

Sub-divisional Officer not specially empowered.

A Sub-divisional officer not specially appointed by the Local Government to discharge the functions of a Collector under section 167 has no power to receive an application, nor has he jurisdiction to issue a notice annulling an incumbrance.[3]

Where an application under section 167 of the Bengal Tenancy Act was made to the Collector, and both the application and the notice issued bore the seal of the Collector, and the notice was duly served, *held*[4] that the provisions of the section were complied with, although the application was received by a Deputy Collector in charge, and the notice was signed by a Deputy Collector "for the Collector." It is not necessary that the Collector should personally receive the petition or personally cause the notice to be served.

Notice to several tenants jointly.

The Calcutta High Court has held that a notice to several tenants jointly is not bad so long as it is served in accordance with the prescribed rules; nor is it bad on the ground that it does not specify the particulars of the land held by the tenants, or the rents payable by them.[5]

Fees for service of notices.

Fees for the service of notices under section 167 are to be levied in accordance with Rules 101 to 104 in Chapter VII. of the Government Rules in Appendix V. to this work (*post*). The Board of Revenue have fixed no special fees under sub-section (*2*).

Mode of service of notices.

As to the mode of service of notices under section 167, *see* Rule 3 in Chapter I. of the Government Rules in Appendix V. to this work (*post*).

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[1] *Nritya Gopal Hasra* v. *Golam Rasool* [1901], I. L. R., 28 Cal, 180.

[2] *Akhai Kumar Sur* v. *Bijai Chand* [1902], I. L. R., 29 Cal. 813.

[3] *Mohabut Singh* v. *Umatul Fatima* [1901], I. L. R., 28 Cal. 66.

[4] *Mahamed Kasem* v. *Nafar Chandra Pal Chowdhury* [1905], I. L. R., 32 Cal. 911 (following *Akhoy Kumar Soor* v. *Bejoy Chand Mahatap* [1902], I. L. R., 29 Cal. 813, 820).

[5] *Jagabandhu Majumdar* v. *Rasho Monjari Dassya* [1900], 5 C. W. N. 272.

Rulings.

When the cardinal point in a suit was whether notice under section 167 of this Act to annul certain incumbrances was properly served or not, an order of the High Court reversing the finding of the lower Court holding that the notice had been properly served, and remanding the case for addition of parties and retrial on its merits, is a final decree, and an appeal from that decree lies to the Privy Council.[1]

The service of notice under this section annulling a mortgage does not debar the mortgagee from making an application to have the sale set aside.[2]

A landlord cannot sell several tenures or holdings together so as to annul incumbrances thereon under this Chapter. He must sell each tenancy separately after having got a decree for the rent due in respect of it if he wishes for the benefit of the special provisions of this Chapter.[3]

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

Bengal Act I. of 1907; E. B Assam Act I. of 1908.

168. (*1*) The Local Government may from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of [a decree for an arrear of rent] due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances; and may, by like notification, rescind any such direction.

(*2*) While any such direction remains in force in respect of any local area, all occupancy-holdings or, as the case may be, occupancy-holdings of the specified class, in that local area, shall, for the purposes of sale

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[1] *Ananda Gopal Gosain v. Nafar Chandra Pal Chowdhry* [1908], I. L. R., 35 Cal. 618

[2] *Brij Kumar Roy v. Dhanukdhari Raut* [1906], 10 C. W. N. 976.

[3] *Hridaynath Dass v Krishna Prasad* [1907], I. L. R., 34 Cal. 298.

under the foregoing section of this Chapter, be treated in all respects as if they were tenures.

The words in brackets were substituted by the Amending Acts of 1907, 1908, for the words "decrees for rent," in consequence of the addition of clause (*c*) to section 161, page 686, *ante*.

No action taken.

The Local Government has not yet found it necessary to take action under this section. Hence, under section 166 (page 694, *ante*), occupancy-holdings are always sold with power to avoid all incumbrances.

Rules for disposal of the sale-proceeds.

169. (*1*) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 295* of the Code of Civil Procedure, shall be observed, that is to say—

* *Now* section 73 of Act V. of 1908.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale:

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of [the confirmation of] the sale;

Bengal Act I., 1907; E. B. Assam Act I, 1908.

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*)

shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application:

Bengal Act I., 1907; E. B. Assam Act I, 1908.

[Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 14[5]A or sub-section (*1*) of section 158B,—

(*i*) payment of the amount due under such decree shall, notwithstanding anything contained in clause (*b*), be made to the decree-holder, and to the co-sharer landlords in proportion to the amount found to be due to each, and,

(*ii*) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale shall, notwithstanding anything contained in clause (*c*), but subject to the determination, in the manner and with the effect mentioned in sub-section (*2*), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.]

(*2*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

Section 73 of the Code of Civil Procedure (Act V., 1908) provides for the rateable distribution of the sale-proceeds among all persons who have attached the property before realisation. Section 169 of the present Act makes a considerable modification in the rule laid down in that section. Under clause (*a*), the decree-holder is to be paid first the costs of, and incidental to, the sale; under clause (*b*), he receives the amount due under the decree; and under clause (*c*), out of the balance, he receives any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale. Principle.

The wording of clause (*c*) has been modified as shown to bring it into conformity with the provisions of section 65 and Order XXI., rule 94, of Act V. of 1908 (Civil Procedure Code), and with previous rulings.[1]

A Court acting under this section is not authorized to allow interest, as the definition of 'rent' [section 3 (*5*), page 61, *ante*] does not include interest.[2] The recent addition of clause (*c*) to section 161 (page 686, *ante*) does not extend to this section. This would appear to throw some doubt on the opinion expressed in another case[3] that "rent" in this clause cannot have been intended to exclude interest accruing thereupon so as to compel the decree-holder to bring a fresh suit for the interest only.

The proviso in sub-section (*1*) was added in consequence of the additions to the Act made in sections 148A and 158B, so as to safeguard the rights of co-sharers to participate in the distribution of surplus sale-proceeds.

A suit by an unregistered tenant (who purchased a share in a tenure after the date of a decree) for his share of the surplus sale-proceeds, when the tenure was sold in execution of a decree for

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[1] *Matangini Chowdrani* v. *Srinath Dass* [1903], 7 C. W. N. 562.
[2] *Manindra Chandra Nandy* v. *Asar Mahmud* [1908], 12 C. W. N. cxliv.
[3] *Bijai Chand* v. *S. C. Mukherji* [1907], 11 C. W. N. 1106.

arrears of rent, is maintainable.[1]; But a Small Cause Court cannot deal with such a suit.[2]

A landlord's claim on the surplus sale-proceeds for rent that fell due in respect of the tenure between the institution of the suit and the date of the sale is preferential to that of the mortgagee of the holding, who stands in the shoes of the judgment-debtor,[3] and whose position cannot be any better than that of his mortgagor. A mortgagee's lien is jeopardized by section 167. He may abandon his lien on the tenure, and ask to have it transferred to the sale-proceeds.[4]

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170.[5] (*1*) Sections 278 to 283 (both inclusive) [and 310A] of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(*2*) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(*3*) The judgment-debtor, or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

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[1] [*The same as f.-n. 1 at p. 703, supra.*]

[2] *Ram Kumar* v. *Ram Kamal* [1883], I. L. R., 10 Cal. 388.

[3] *Prabal Charan* v. *Jadupati* [1907], I. L. R., 34 Cal 724.

[4] *Nim Chand* v. *Asutosh Dutt* [1905], 9. C. W. N. 117.

[5] In s 170 (*1*), the word, figures, and the letter in square brackets have been inserted by s. 54 of Ben. Act I. of 1907 only. The sections therein referred to are of the old Code (Act XIV., 1882), ss. 278 to 283 corresponding *now* to rr. 58 to 63, and s. 310A, to r. 89, of O. XXI. (First Schedule) of Act V., 1908 (the new Code).

[(*4*) The withdrawal of the amount deposited under section 310A* of the Code of Civil Procedure by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.]

E. B. Assam Act I., 1908, only.

*Of Act XIV. of 1882, the old Code [*now* r. 89, O XXI, (First Schedule), Act V., 1908, the new Code].

Sub-section (*4*) was added by E. B. Assam Act I. of 1908, and is not in force in Bengal.

Sub-section (*4*).

Cf. section 63 of Bengal Act VIII. of 1869.

Reference.

Rule 89, Order XXI. of Act V. of 1908 (corresponding to section 310A of Act XIV. of 1882, which was added to that Act in May 1894 only), provides as follows:—

S. 310A (*new* r. 89, O. XXI.), C. C. P.

"89. (*1*) Where immoveable property has been sold in execution of a decree, any person, either owning such property, or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

Application to set aside sale on deposit.

(*a*) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and,

(*b*) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(*2*) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(*3*) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale."

Object of rule 90 (section 311 of the old Code) referred to as above.

Rule 90 refers to applications made to set aside a sale on the ground of a material irregularity or fraud in publishing or conducting it.

Sub-section (1).

Compare section 174, *infra*, and notes thereon. By Bengal Act I. of 1907, the word, figures, and the letter, "and 310A," were inserted in sub-section (*1*) of this section. A better place in which to insert this would have been section 174 (*3*), *post*. But, as it has since been *held*[1] that, even before this Amending Act was passed, section 310A (*now* rule 89, Order XXI.) of the Civil Procedure Code could not apply to a tenure or holding attached in execution of a decree for arrears due thereon, because that section (310A) was added to the Civil Procedure Code then in force only in 1894, *i. e.*, long after this Act was first passed, it would appear that the insertion of these words was unnecessary.

By E. B. Assam Act I. of 1908, these words were not inserted in sub-section (*1*). It must be presumed that they were intentionally omitted. However, as the new sub-section (*4*) inserted by that Act in this section necessarily implies the possibility of action being taken under rule 89 (formerly, section 310A) of Order XXI. of the Civil Procedure Code just quoted, it seems clear that the intention of that Legislature was to permit of such applications being made as provided for by rule 89 of Order XXI.

The ruling[1] just cited is to the effect that such applications were never permissible. E. B. and Assam Act I. of 1908 was published in the local official Gazette on June 10th, 1908. The ruling just quoted[1] was delivered in January, 1908. It must be concluded that, in Eastern Bengal and Assam, applications under Order XXI., rule 89, of Act V. of 1908 (the Civil Procedure Code), are now maintainable in rent-decree execution proceedings, whereas they are not so maintainable in Bengal proper.

An under-*raiyat* could apply under section 310A (*now* rule 89 of Order XXI.), Civil Procedure Code.[2]

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[1] *Asirudi Mandal* v. *Mokhada Moyee Dasi* [1908], I. L. R., 35 Cal. 543.
[2] *Chandra Kumar Nath* v. *Kamini Kumar Ghose* [1907], 11 C. W. N. 742.

Exclusion of certain rules of the Code of Civil Procedure (Act V, 1908)

The application of rules 58 to 63 and 89, Order XXI. of the Code of Civil Procedure (Act V., 1908), which relate to claims to attached property, is excluded by this section in respect of a tenure or holding attached in execution of a decree for its own arrears.[1] No claim, therefore, can be preferred under rule 58, Order XXI. of that Code to a tenure or holding so attached, "whether the claim is to the tenure or adverse to the tenure,"[2] *viz.*, whether the claim is as regards the tenure itself, or is based upon the allegation that the property attached, and in respect of which the claim is made, does not form part of the tenure.

Attachment in execution of decree obtained by a fractional co-sharer.

An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of rent of his separate share is not such an attachment as is contemplated by section 170 of the Bengal Tenancy Act, and does not exclude the operation of the claim-sections of the Code.[3] So, too, this section does not apply where a co-sharer landlord obtains a decree in respect of the arrears of *two* holdings; and, in such a case, a claim under section 278 (*now* rule 58, Order XXI.) of the Civil Procedure Code would be maintainable.[4]

But, when a decree for the entire rent has been obtained by one of several co-sharers, by making the other parties defendants, and is executed by him alone, and the defaulting tenure is attached, no claim by a third person under rule 58, Order XXI. of the Code of Civil Procedure, is maintainable. The decree has in this case the same effect as if it had been obtained by all the co-sharers.[5]

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[1] *Khetra Pal Sing* v. *Kritarthamoyi Dasi* [1906], I. L R., 32 Cal. 566.

[2] *Makbul Ahmed* v. *Rakhal Das Hazra* [1900], 4 C. W. N. 732; *Amrito Lal Bose* v. *Nemai Chand Mukhopadhya* [1901], 5 C. W. N. 474, F. B. (overruling *Jagabundhu Chottopadhya* v. *Deenu Pal* [1900], 4 C. W. N. 734).

[3] *Beni Madhub Roy* v. *Jeead Ali Sircar* [1890], I. L. R., 17 Cal 390.

[4] *Bipro Das* v. *Rajaram* [1909], I. L. R., 36 Cal. 765 (following the *ratio decidendi* of *Hridoynath Das* v. *Krishna Prasad* [1907], I. L R., 34 Cal. 298: 11 C. W. N. 497, and of *Baikanta Nath Roy* v. *Thakur Debendro Nath Sahi* [1906], 11 C. W. N. 676).

[5] *Chandra Sekhar Patra* v. *Ram Manjhee* [1899], 3 C W. N. 386.

Application of the section to decrees obtained before present Act came into operation.

This section applies to tenures or holdings attached, after the present Act came into operation, in execution of decrees obtained before that date.[1]

Sub-section (3).

The purchaser of a tenure from the tenant against whom a rent-decree was being enforced is not included in sub-section (*3*), and cannot make a deposit under it, as he has not an interest voidable by the sale.[2] But, when such a purchaser was allowed by the lower Court to deposit the amount under this sub-section, the High Court did not set aside the order on the ground that the purchaser had made a similar deposit before, which the decree-holder had withdrawn.

Sub-section (4).

Sub-section (*4*) was apparently added to counteract in E. B. Assam a ruling in which it was *held*[3] that a landlord withdrawing money deposited by a transferee of his tenant may be estopped from denying the transferability of the tenancy.

This sub-section is not in force in Bengal proper.

Sections 170 and 171 apply only in execution-proceedings, and do not empower a third party (purchaser) to intervene and deposit rent in arrears when the registered tenant is being sued for arrears.[4]

See also the notes on section 171, next following.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (*1*) When any person having, in a tenure or holding advertised for sale under this Chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve

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[1] *Deb Narain Dutt* v. *Narendra Krishna* [1889], I. L. R., 16 Cal. 267 (F. B.).

[2] *Jotindra Mohan Tagore* v. *Durga Debi* [1906], 10 C W. N. 438.

[3] *Barclay* v. *Syed Husain Ali* [1908], 6 C. L. J. 601.

[4] *Sarojindra Krishna Deb* v. *Sanyasi Charan Ghose* [1910], 14 C. W. N. clxxxiii

per centum per annum, and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding, other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

References.

Cf. clause *Fourth* of section 13 of Regulation VIII. of 1819 (*Patni Taluqs*), which has been declared, by section 6 of Bengal Act VIII. of 1865 and section 62 of Bengal Act VIII. of 1869, to be applicable also to other cases. The provisions of section 13 of Regulation VIII. of 1819 refer to payments made by subordinate *taluqdars* to stay the sale of the superior tenure. The present section gives, to every person who has in the tenure an interest which would become voidable by the sale, a lien upon the tenure in case of any payment made to save the tenure from sale.

Application of the section.

Where a decree made in a suit for rent was in the main one for rent, although it included other sums which were not strictly rent within the meaning of the Bengal Tenancy Act, and in execution thereof the tenure in arrear was ordered to be sold under Chapter XIV. of the Act and advertised, it was *held*[1] that the holder of an under-tenure liable to be avoided would be justified in making a payment to prevent the sale of the superior tenure, and, having made the payment, would

[1] *Jnanadasundari Choudhrani* v. *Atul Chandra Chakravarti* [1905], I. L. R., 32 Cal. 972.

be entitled to the rights which are given to a person who makes a payment under this section (171).

Complete interest not required to authorize payment.

In order to entitle a person to make the payment, it is not necessary that the interest should be complete. For example, in a case under Bengal Act VIII. of 1865, it was *held*[1] that, where an under-tenure has been transferred, the transferee would be entitled to protect the tenure from sale in execution of a decree, although his transfer had not been registered in the *serishta* of the landlord, or of the superior tenure-holder. But the decree must be a rent-decree, not merely a money-decree of a co-sharer landlord, to make this section applicable.[2]

A private purchaser of a tenure, who has not been recognized by the landlord, cannot maintain a suit to set aside a sale held in execution of a rent-decree obtained under Act X. of 1859 against a registered tenant.[3]

Effect of the statutory mortgage.

The tenure becomes mortgaged by operation of law, and the statutory mortgage takes priority over every other charge save the charge for arrears of rent which is created by section 65, *ante*, page 305. Such mortgage is not an incumbrance as defined in section 161, *ante*, page 686, because it was not created by the tenant, but came into being by the operation of section 171, and independently of the tenant; and cannot be annulled by a purchaser at a sale held under the provisions of the present Chapter.[4] The security extends over the whole tenure in respect of which the payment is made, and is not apportioned according to the interests of the tenure-holders if there are several.[5] A *se-patnidar*, by paying in the amount due from several *dar-patnidars*, gets a mortgage over the whole tenure.[5]

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[1] *Anund Lall Mookerjee* v *Kalika Pershad Misser* [1873], 20 W. R. 59.
[2] *Umatul Fatim* v. *Nimai Charan* [1908], 6 C. L. J. 592.
[3] *Patit Sahu* v. *Hari Mahanti* [1901], 5 C. W. N. 126.
[4] *Pasupati Mohapatra* v *Narayani Dassi* [1897], I. L. R., 24 Cal. 537: s. c., 1 C. W. N. 519.
[5] S. A No. 47 of 1889, decided by PETHERAM, *C. J.*, and BANERJEE, *J.*, 1st May 1890.

A co-sharer tenant, paying in, under section 174 (*post*), the whole amount of the decree for which he is liable along with the other defendants, does not acquire a charge over the shares of his defaulting co-tenants.[1]

Payment by a co-sharer tenant

The section does not declare how the person making the payment is to obtain possession of the tenure. Under Regulation VIII. of 1819 (clause *Fourth* of section 13), he can do so by an application. Probably the same course was contemplated by the Legislature in the case of payments under the present section. Such a person is not obliged to bring a regular suit for the purpose,[2] unless a third party is in possession.[3]

How person making payment is to obtain possession.

A person who enters into possession of a tenure as mortgagee under the provisions of Regulation VIII. of 1819 cannot appropriate the whole of the collections to the satisfaction of his own claim. He is bound, in the first place, to pay the rent due to the landlord; nor is the defaulter liable for the rent of the tenure during the period of possession by the person so holding it as mortgagee.[4] The same principle, it seems, would be applicable in the case of persons obtaining possession under the present section.

Liability of mortgagee for rent.

The remedy provided by sub-section (*2*) of section 171 is in addition to, and not in derogation of, any other remedy to which the person making the payment is entitled under the law.

Sub-section (2).

So he can recover the money by suit,[5] or can deduct it from the rent payable by him (*see* section 172, next following).

Other remedies.

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[1] *Gopi Nath Bagdi* v. *Ishur Chundra Bagdi* [1895], I. L. R., 22 Cal. 800.

[2] *Umatul Fatim* v. *Nimai Charan* [1908], 6 C. L. J. 592.

[3] *Ram Narain* v. *Lal Dass* [1908], 12 C. W. N. 55

[4] *Lala Bharab Chandra Karpur* v. *Lalit Mohun Singh* [1885], I. L. R., 12 Cal. 185. In a case arising under the Transfer of Property Act, it has been held that, where the subject of a mortgage is a leasehold property, and the mortgagee is put into possession under circumstances which amount to an assignment or transfer of the leasehold interest, the mortgagee becomes liable, as a rule, to pay the rent; but, where the mortgagee is in possession, and his name is registered in the landlord's books as the tenant, there can be no doubt as to his being liable for the rent.

[5] *Lukhi Narain Mitter* v. *Khetra Pal Singh Roy* [1873], 13 B. L. R. 146 (P. C.); *Umbika Debia* v. *Pran Huree Doss* [1869], 4 B. L. R., F. B., 77 s. c., 13 W. R., F. B., 1.

But, in order to entitle him to maintain a suit for the recovery of the amount, there must be some privity between him and the defaulter. In other words, the relation between the two must involve some contract on the part of the latter to pay the rent as it became due. If the interest is the creation of the tenant, such a contract may be implied. Where a mortgagee purchased the mortgaged property in execution of his own decree, and, on the property being again put up to sale in execution of a decree for arrears of rent due prior to the date of his purchase, he paid the amount and stayed the sale, it was *held*[1] that he could not maintain a suit to recover the amount of his payment, for there was no privity between him and the judgment-debtors under the decree for arrears of rent.

A mortgagee, making payments to save the mortgaged property from being sold, has an additional lien on the property for the sums so paid.[2]

It has been *held*[3] that, where a deposit is made under section 171 of this Act, the depositor can, as against the judgment-debtor, obtain delivery of possession of the holding advertised for sale, by application to the execution Court: but, by such application the depositor is not entitled to invite the execution Court to oust a stranger to the proceeding. If he is met by a stranger, his remedy is by a regular suit for recovery of possession.

Payments made by a *dar-patnidar* to save the superior *patni* from sale do not give the *dar-patnidar* a first charge on the *patni*: a decree for rent takes precedence of his lien.[4]

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this Chapter in execution of a decree against

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[1] *Srimati Moharanee Dasya* v. *Harendra Lal Roy Chowdhry* [1896], 1 C. W. N. 458. *See* also the remarks of PETHERAM, *C.J.* in *Lalit Mohan Saha* v. *Srinibas Sen* [1886], I. L. R., 13 Cal. 331.

[2] *Rakhohari Chattoraj* v. *Bipro Das* [1904], I. L. R., 31 Cal. 975 (following *Upendra Chandra Mitter* v. *Tara Prosonno* [1903], I. L. R., 30 Cal. 794).

[3] *Ram Narain Routh* v. *Lal Das Routh* [1907], 12 C. W. N. 55.

[4] *Maharaj Bahadur* v. *Forbes* [1908], I. L. R., 35 Cal. 737.

a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Inferior tenant paying to zamindar may deduct from rent.

The right to deduct is not confined to payments made into Court. A tenant may similarly deduct from the rent any sum which he may have paid direct to the *zamindar* for the direct purpose of staying the sale[1] of a *patni*. This was ruled prior to the passing of this Act; but the same principle holds good.

Decree-holder may bid at sale; judgment-debtor may not.

173. (*1*) Notwithstanding anything contained in section 294* of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(*2*) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(*3*) When a judgment-debtor purchases, by himself, or through another person, a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale; and the costs of the application and order, and any deficiency of price which

*i. e., s 294 of Act XIV., 1882 (the old Code), corresponding *now* to r. 72, O XXI. (First Schedule) of Act V., 1908 (the present Code).

[1] *Tariny Debee* v. *Shama Churn Mitter* [1882], I. L. R., 8 Cal. 954. A different view was taken in *Mahomed Husain* v. *Bahaulla*, 6 W. R. 84.

may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Principle.

Rule 72, Order XXI. (formerly section 294) of the Code of Civil Procedure (Act V., 1908), declares that "No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property." Under sub-section (*1*) of section 173 of the present Act, the holder of a rent-decree, in execution of which a tenure or holding is sold, may bid for or purchase the property without such permission. But, under sub-section (*2*), the judgment-debtor is debarred from either bidding for or purchasing the property ; and, if he does so he renders himself liable to the penalty provided in section 185 of the Indian Penal Code (Act XLV. of 1860).

Setting aside a sale.

When the judgment-debtor purchases the property, either by himself, or through another, the sale may be set aside on the application of the decree-holder or any other person interested in it. The sale is not absolutely void, but only voidable. The section leaves it in the discretion of the Court to set it aside or not as it "thinks fit." The proper Court to determine whether the sale should stand or fall is the Court that held the sale.[1] It has been *held*[2] that an attachment-creditor is interested in the sale, and has, therefore, a *locus standi* to apply to set aside a purchase by the judgment-debtor. The decree-holder and all the judgment-debtors are necessary parties to proceedings under section 173 of the Bengal Tenancy Act.[3]

Also the unregistered purchaser of part of the tenancy from the registered tenant may apply under this section,[4] as he is bound by the decree, and, so, is a representative of the tenant

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[1] *Gopal Chunder Mitra* v. *Ram Lal Goshain* [1894], I. L. R., 21 Cal. 554.

[2] *Eastern Mortgage and Agency Co., Ld.*, v. *Gobind Chundra Chatterjee* [1898], 3 C. W. N. xiv.

[3] *Mohima Chandra Neogy* v. *Jogendro Kumur Ghosh* [1898], 3 C. W. N. xiv.

[4] *Ashgur Ali* v. *Asabudin Khan* [1905], 9 C. W. N. 134 (following I. L. R., 24 Cal 62).

within the meaning of section 244 (*now* 47), Civil Procedure Code (Act XIV., 1882).

Appeal.

In one case,[1] the Calcutta High Court laid down, somewhat too broadly, that no appeal lay from an order setting aside a sale under section 173 of the Bengal Tenancy Act. This view was considered in a later case,[2] and the pronouncement was *held* to be applicable only to appeals by auction-purchasers, the Court being of opinion[3] that, although no appeal could be preferred by the auction-purchaser from an order setting a sale aside under section 173, an appeal might lie on behalf of the decree-holder or a co-judgment-debtor.

An appeal will lie on behalf of the judgment-debtor.[4] Where the appellant's case is, that the purchase was made, not by a third party, but by some of the judgment-debtors *benami* in the name of the auction-purchaser, the case, if proved, would come under section 47 (*formerly*, 244) of the Code of Civil Procedure (Act V., 1908), and *á fortiori* an appeal would lie.[4] But, if the auction-purchaser is a third person, and the judgment-debtor applies, under rule 89 of Order XXI. (*formerly*, section 310A of Act XIV., 1882) of the Civil Procedure Code (Act V., 1908), to have the sale set aside, and the decree-holder does not contest it, no question arises between the decree-holder and the judgment-debtor, so that section 47 of Act V. of 1908 does not apply, and that order is not appealable.[5]

Second appeal.

Where the auction-purchaser is a *benamidar* for the judgment-debtor, a second appeal lies to the High Court from the order made on an application to set aside a sale under section

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[1] *Roghu Singh* v. *Misri Singh* [1894], I. L. R, 21 Cal. 825 (GHOSE and GORDON, *JJ.*).

[2] *See* also *Hara Bandhu Adhikari* v. *Harish Chunder Dey* [1898], 3 C. W. N. 184.

[3] *Mohima Chandra Neogy* v. *Jogendro Kumar Ghosh* [1898], 3 C. W. N. xiv.

[4] *Sriram Chunder Singh* v. *Guru Dass Kundu* [1899], 3 C. W. N. civ; *Chand Monee Dasya* v. *Santo Monee Dasya* [1897], I. L R, 24 Cal. 707: 1 C. W. N. 534; *Mohima Chunder Neogy* v *Jogendro Coomar Ghosh* [1898], 3 C W. N. xiv. *See* also *Harabandhu Adhikari* v. *Harish Chunder Dey* [1898], 3 C. W. N. 184

[5] *Amir Rai* v. *Basdeo Singh* [1907], 5 C. L. J. 204.

173 of the Bengal Tenancy Act and rule 90, Order XXI. (*or* section 311 of the Code of 1882) of the Code of Civil Procedure (Act V. of 1908), as the application is one under section 47 (*formerly*, 244) of the Code of Civil Procedure (Act V., 1908).[1]

The auction-purchaser has no right of appeal against an order made under this section.[2]

The purchaser of the interests of a judgment-debtor is his representative for the purpose of execution-proceedings.[3]

Limitation. An application to set aside a sale under section 173 is governed by article 181, Schedule I. of the Limitation Act (IX. of 1908), and should be made within three years from the date when the right to apply accrues.[1]

Application by judgment-debtor to set aside sale.

174. (*1*) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five *per centum* of the purchase-money.

(*2*) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale; and the provisions of section 315* of the Code of Civil Procedure shall apply in the case of a sale so set aside:

**New rule 93, Order XXI, Act V. of 1908.*

Provided that, if a judgment-debtor applies, under section 311* of the Code of Civil Procedure, to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section; [and, if he

**Now rule 90, Order XXI, Act V. of 1908.*

Bengal Act I., 1907; E. B. Assam Act I., 1908.

[1] *Chand Monee Dasya* v. *Santo Monee Dasya* [1897], I L. R., 24 Cal. 707: (s. c.) 1 C. W. N. 534.

[2] *Durlav Pradhana* v. *Mahomed Mainaddi* [1909], 13 C. W. N. c.

[3] *Akhai Kumar Sur* v. *Bijai Chand* [1902], I. L. R., 29 Cal. 813.

applies under this section, he shall not be entitled to make an application under section 311* of the Code of Civil Procedure.]

*Now rule 90, Order XXI, Act V. of 1908.

(3) Section 313* of the Code of Civil Procedure shall not apply to any sale under this Chapter.

*Now rule 91, Order XXI., Act V. of 1908.

The words in brackets have been added to sub-section (2) by the latest Amending Acts, *i. e.*, Bengal Act I. of 1907 and Eastern Bengal and Assam Act I. of 1908.

Principle.

Section 174 provides a particular means by which sales can be set aside after they have been concluded, and the purchaser at the sale compensated for loss; but this must be done by order of the Court which made the sale. "The right to have a sale set aside is not an abstract right which can be enforced by action against one person alone, but it is a right to call upon the Judge to set aside a sale, and, if he does not do it, to bring his failure to do so to the notice of the High Court."[1]

Application of section 174 to proceedings in execution of decree passed before this Act came into force.

The Calcutta High Court held in two cases that, where a sale was held in pursuance of a decree made under the old Act, and the execution of the decree was applied for before Act VIII. of 1885 came into force,[2] and also where the decree was made under the old Act, but execution was applied for after Act VIII. of 1885 came into force,[3] the sale could not be set aside under section 174 of the present Act. The view taken was, that, in the absence of express legislation or direct implication to the contrary, the presumption is, that the provisions of an Act which creates a new right are not intended to be retrospective in their operation. This view has, however, been expressly overruled by a subsequent Full Bench decision,

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[1] *Kabilaso Koer* v. *Raghu Nath Sahan Singh* [1891], I. L. R., 18 Cal. 481.

[2] *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy* [1887], I. L. R., 14 Cal. 636 (F. B.).

[3] *Umir Ali* v. *Ram Komal Shaha* [1888], I. L. R., 15 Cal. 383 (F. B.).

in which] it has been *held*[1] that section 174 does not create a new right in a judgment-debtor, and that, therefore, it is applicable to proceedings in execution of a decree which had been passed before the present Act became law.

Application of section 310A (*new* rule 89, Order XXI) of the Code of Civil Procedure.]

It was also *held* in the case[1] just referred to that the provisions of rule 89 (*formerly*, section 310A), Order XXI. of the Code of Civil Procedure (Act V., 1908), were applicable to proceedings under section 174 of the Bengal Tenancy Act. [Compare section 143 (*2*) of this Act (page 581), *supra*.]

Application to set aside sale of land on ground of irregularity or fraud.

But, since the insertion of the word, figures, and letter "and 310A" in section 170 (*1*), *ante* (page 704), applications under rule 89, Order XXI. (*or* section 310A of Act XIV., 1882) of Act V. of 1908, can no longer be made in respect of sales in execution of rent-decrees in Bengal proper. Such applications can, however, still be made in Eastern Bengal and Assam. This must be borne in mind in applying the rulings quoted below:—

Apparently the word, figures, and letter, "and 310A," inserted in section 170 (*1*), would more fittingly have found a place in section 174 (*3*), since section 310A of the old Code of Civil Procedure (*now* rule 89, Order XXI., of the new Code, Act V., 1908) and section 174 of this Act could take effect only after the sale had taken place; whereas section 170 provides for certain remedies before the actual sale. The operation of section 310A (*i. e.*, Order XXI., rule 89) was expressly excluded in Bengal in order to encourage interested parties (*i. e.*, mortgagees or unrecognized transferees) to intervene before the sale and stop it; and so prevent interminable litigation. Sub-section (*4*) of section 170 was introduced in Eastern Bengal and Assam to prevent, as far as possible, the inevitable litigation that must result if third parties are allowed to intervene, between the landlord and the tenant whom he recognizes, by applications under rule 89, Order XXI. of Act V. of 1908.

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[1] *Jogodanund Singh* v. *Amrita Lal Sircar* [1895], I. L. R., 22 Cal. 767, F. B. (overruling *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy* [1887], I. L. R., 14 Cal. 636, and the cases based thereon).

[The corresponding rule 89, Order XXI., of the present Code, Act V. of 1908 (to section 310A of the old Code, Act XIV. of 1882) is quoted at page 705, *ante*, under section 170.]

Rule 90, Order XXI. of the Code (corresponding to section 311 of the old Code), declares that—

Application to set aside sale on ground of irregularity or fraud.

Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

Rule 91, Order XXI. of the present Code, Act V. of 1908 (section 313 of the old Code, Act XIV., 1882) is as follows:—

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold.

Rule 93, Order XXI. of Act V. of 1908 (corresponding to section 315 of the former Code, Act XIV., 1882) declares that—

Return of purchase-money in certain cases.

When a sale of immoveable property is set aside under rule 92 (*i. e.*, after deposit as provided by rule 89), the purchaser shall be entitled to an order for repayment of his purchase-money (with or without interest, as the Court may direct) against any person to whom it has been paid.

Conditions relating to deposits.

The amount deposited must primarily be the amount of the decree of which execution is sought. But, if, before the sale is actually held, the decree of the Court of first instance is modified in appeal in favour of the judgment-debtor, then, necessarily the amount must be the amount recoverable under the decree of the Appellate Court.[1]

In one case[2] the Calcutta High Court has held that, in order to claim the benefit of this section, the deposit by the

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[1] *Bhikhi Singh* v. *Bhanu Mahton* [1899], 3 C. W. N. 231.

[2] *Rahim Bux* v. *Nundo Lal Gossami* [1887], I. L. R., 14 Cal. 321 (PRINSEP and BEVERLEY, JJ.).

judgment-debtor should be of such a nature as to be at once payable to the parties. If a deposit, otherwise than in the currency of the country, were receivable, the finality which the law contemplates in such a transaction would be completely lost: and, accordingly, a deposit made in the shape of Government Promissory Notes is not good.

A deposit under section 174 must be such as the decree-holder may draw out at once. A deposit not made payable to the decree-holder until a certain event had arisen has been *held*[1] not to be a deposit within the meaning of the section.

The judgment-debtor must deposit *in Court* the whole of the debt, the expenses, and the damages which the purchaser has sustained.[2]

If the Court be closed on or before the last day of the period limited, the judgment-debtor may pay the amount into Court on the first day the Court re-opens,[3] notwithstanding the absence of any express provision to this effect.[4]

Section 174 provides no machinery by which the amount payable under the section is to be ascertained. Where, therefore, the amount has been calculated and settled by an officer of the Court, and that amount has been paid into Court, an order to set aside the sale must be made by the Court as a matter of right, even though the amount deposited falls short of the amount required.[5]

Similarly, it has been *held* that, when the amount payable by the judgment-debtor under section 310A of the Code of

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[1] *Musett Shakoti* v. *Maharajah Bahadur Sir Jotindra Mohon Tagore* [1896], 1 C. W. N. 132.

[2] *Kabilaso Koer* v. *Raghu Nath Sahan Singh* [1891] I. L. R., 18 Cal. 411.

[3] *See* s. 4 of the Limitation Act (IX. of 1908).

[4] *Shooshee Bhusan Rudro* v. *Gobind Chunder Roy* [1890], I. L R., 18 Cal. 231; *Mayer* v. *Harding* [1867], L. R., 2 Q. B. 410.

[5] *Ugrah Lal* v. *Radha Pershad Singh* [1891], I L. R., 18 Cal. 255; *Abdool Lutif* v. *Jadub Chandra Mitter* [1897], I. L. R., 25 Cal. 216.

Civil Procedure, *i. e.*, Act XIV., 1882 (now rule 89, Order XXI., Act V., 1908), which is applicable also to sales in execution of rent-decrees,[1] has been calculated by an officer of the Court, and has been deposited, an order setting aside the sale must be made by the Court as a matter of right.[2]

Where the amount deposited is less than the amount which the judgment-debtor is actually bound in law to put in in order to entitle him to the relief he seeks, it must appear that he was misled by the Court or the officer charged by the Court with the duty of supplying the information.[3]

Notice to auction-purchaser.

An auction-purchaser is entitled to notice before an order is made under rule 89, Order XXI. of the present Code of Civil Procedure, Act V. of 1908 (formerly, section 310A of the old Code, Act XIV. of 1882), or under section 174 of the present Act, for setting aside a sale.[1]

The right to deposit the decretal amount.

It has been *held*[4] by the Calcutta High Court that the right to deposit the amount, and apply to have the sale set aside, is limited to the judgment-debtor alone, and does not extend to his assignee. This would now seem to be the law in Bengal, but not in Eastern Bengal and Assam, as section 174 of this Act is far less wide than rule 89, Order XXI. of the Code of Civil Procedure, which gives the right to make the deposit and the necessary application to have the sale set aside to "any person holding an interest in the property sold." The words, "any person whose immoveable property has been sold," in the corresponding section 310A of the old Code (Act XIV., 1882), have been construed to include, not only the judgment-debtor, but all

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[1] *Janardhan Ganguli* v. *Kali Kristo Thakur* [1895], I. L. R., 23 Cal. 393; *Bungshidhar Haldar* v. *Kedar Nath Mondal* [1896], 1 C. W. N. 114. Comp. *Bhairab Pal* v. *Prem Ch Ghose* [1897], 1 C. W. N. clxi., in which it was laid down that notice to the auction-purchaser was not necessary.

[2] *Makbool Ahmed Chowdhry* v *Basle Sabhan Chowdhry* [1898], I. L. R., 25 Cal. 609.

[3] *Chandi Churan Mandal* v. *Banke Behary Lal Mandal* [1899], I. L R., 26 Cal. 449, F. B (distinguished in *Sheikh Fakir* v. *Biraj Mohini Dassi* [1906], 11 C. W. N. 116).

[4] *Rajendro Narain Roy* v. *Phudy Mondul* [1888], I. L. R., 15 Cal. 482.

persons having an interest in the property, whether qualified, partial, or absolute. Accordingly a mortgagee, whether holding a simple mortgage or a mortgage by conditional sale, of a tenure or holding sold in execution of a decree for arrears of rent due in respect thereof, is a person whose immoveable property "has been sold" under section 310A (*now* rule 89, Order XXI.) of the Code.[1]

Similarly, the purchaser of a share of an occupancy-holding, which is transferable by custom, can apply under section 310A (*now* rule 89, Order XXI. of Act V., 1908) of the Code, as being a person "whose immoveable property has been sold" (*or* "holding an interest in the property sold") in execution of a decree for arrears of rent due in respect of the holding.[2] But an under-*raiyat* cannot do so.[3]

Again, it has been *held*[4] that the *benamidar* of the judgment-debtor is entitled to apply to have the sale set aside.

Who may apply to set aside sale under the Code.

A person whose tenure or holding has been sold in execution of a decree obtained by a co-sharer landlord for his separate share of the rent is clearly entitled to apply for relief under rule 89, Order XXI. of the Code, as such a decree would be ordinarily a simple money-decree, although he may not be able to do so under section 174 of the present Act, which has been supposed to apply only to a sale under a decree obtained by the sole landlord or the general body of the landlords. But *see* sections 148A and 158B (pages 619 and 671, *ante*, respectively) and the extension of this Chapter to such cases by section 188A, *post*.

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[1] *Paresh Nath Singha* v. *Nobo Gopal Chattopadhya* [1901], 5 C. W. N., p. 821, F. B. (overruling *Nityananda Patra* v. *Hira Lal Karmokar* [1900], 5 C. W. N. 63).

[2] *Benodini Dassi* v. *Peary Mohan Haldar* [1903], 8 C. W. N. 55.

[3] *Abid Mollah* v. *Diljan Mollah* [1902], I. L. R., 29 Cal. 459. The correctness of this decision was questioned in *Narain Mandal* v. *Sourindra Mohan Tagore* [1905], I. L. R., 32 Cal. 107. *Kunja Behari* v. *Sambu Chandra Roy* [1903], 8 C. W. N. 232, referred to also.

[4] *Basi Poddar* v. *Ram Krishna Poddar* [1896], 1 C. W. N. 135; *Paresh Nath Singha* v. *Nobo Gopal Chattopadhya* [1901], 5 C. W. N. 821.

The net result would appear to be that, in Eastern Bengal and Assam, a tenant has fuller remedies provided for him than his brother in Bengal can have.

A person who claims to be a purchaser of a tenure prior to its attachment in execution of a decree for its own arrears of rent is entitled to apply, under section 311 (*now* rule 90, Order XXI. of Act V., 1908) of the Code of Civil Procedure, to have the sale set aside.[1] Act XIV., 1882.

A person who acquired an interest in a property before the judgment-debtor became liable can apply, under section 310A of the Code of Civil Procedure[2] (*now* rule 89, Order XXI. of Act V., 1908), but a purchaser at a private sale from the judgment-debtor after sale in execution has no *locus standi*.[3] Ditto.

The Calcutta High Court seems to have held in one case[4] that the holder of a *howla* within an *osut taluq*, which had been sold free from incumbrances in execution of a decree for arrears, had no right to apply under section 310A (*now* rule 89 as aforesaid) for setting aside the sale. The correctness of this decision was open to question in view of the ruling in the Full Bench case cited above,[5] and it has been dissented from expressly since.[6]

A *dar-mokararidar* has a right to apply under that section when the superior *mokarari* tenure is sold.[6]

Section 73 (formerly, 295 of Act XIV., 1882) of the Code of Civil Procedure (Act V., 1908), which provides for the rateable Amount deposited cannot be rateably distributed.

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[1] *Aubhoya Dassi* v. *Pudmo Lochun Mondol* [1895], I. L. R., 22 Cal. 802.
[2] *Bungshidhar Haldar* v. *Kedar Nath Mondal* [1896], 1 C. W. N. 114.
[3] *Hasari Ram* v. *Badai Ram* [1897], 1 C. W. N. 279.
[4] *Administrator-General of Bengal* v. *Mahomed Kholil* [1901], 5 C. W. N. cxxxii. (not followed in *Narain Mandal* v. *Sourindra Mohan Tagore* [1905], I. L. R., 32 Cal. 107).
[5] *Paresh Nath Singha* v. *Nobo Gopal Chattopadhya* [1901], 5 C. W. N. 821, F. B. (overruling *Nityananda Patra* v *Hira Lal Karmokar* [1900], 5 C. W. N. 63).
[6] *Narain Mondal* v. *Sourindra Mohan Tagore* [1905], I. L. R., 32 Cal. 107 (dissenting from *Administrator-General of Bengal* v. *M. Kholil* [1901], 5 C. W. N. cxxxii.).

distribution of assets realized by sale or otherwise, does not apply to a deposit made by a judgment-debtor, either under section 174 of the present Act, or under section 310A (at present, rule 89, Order XXI., Act V., 1908) of the Code.[1]

Act XIV., 1882.

Order under rule 93, Order XXI. of the present Code.

When a deposit has been made in accordance with the law, and an order has been passed setting aside the sale, the law requires that there should be a further order under rule 93, Order XXI. of the Code of Civil Procedure (Act V., 1908), directing the return of the purchase-money to the purchaser. This order may be enforced as a decree for money.

Rule 90, Order XXI. of the Code (Act V., 1908)

Rule 90, Order XXI. of the Code of Civil Procedure (Act V., 1908) gives to a person whose property has been sold in execution of a decree the right to apply to have the sale set aside on the ground of material irregularity in publishing or conducting the sale when substantial injury has been caused to the applicant by the irregularity. This right is not confined to sales under the Code, but is equally applicable to sales under the Rent Law.[2] The result of the decision under the old law just referred to has been virtually incorporated in the present Act, with this qualification that, where a person makes an application under that rule of the Code, he shall not be entitled to apply under section 174 of the present Act,[3] and *vice versâ*, in view of the words lately added to sub-section (*2*), clause (*2*).

Sub-section (3) of section 174.

As the law makes the rent of a tenure or holding the first charge thereon, no application can be made under rule 91, Order XXI. of the Code of Civil Procedure (Act V., 1908) to set aside a sale on the ground that the person against whom execution had been taken out had no saleable interest in the tenure or holding sold, as, the rent being a first charge on the tenancy, it is saleable for arrears of rent, no matter in whose hands it

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[1] *Bihari Lal Paul* v. *Gopal Lal Seal* [1897], 1 C. W. N. 695.

[2] *Asinoonnessa Khatoon* v. *Gora Chand Dass* [1881], I. L. R., 7 Cal. 163.

[3] In *Rajendra Nath Haldar* v. *Nilratan Mitter* [1896], I. L. R., 23 Cal. 958, it was *held* that, when a person had applied under s. 310A (*now* r. 89, O. XXI.) of the Code, he was precluded from proceeding under s. 311 (*now* r. 90 of the same Order).

is at the time of the sale. A person who is in *bonâ-fide* possession of property in his own right, and is dispossessed under colour of a decree against another, may apply under rules 97, 99, and 103, Order XXI. of the Code of Civil Procedure, to recover possession of the property. Sub-section (*3*) of section 174 of the present Act does not debar a person claiming a tenure or holding from asking relief under the rules of the Code just cited. He can also assert his right by suit.

Act V., 1908.

Orders under section 174 not appealable

An order made under section 174 of the present Act does not come within the purview of section 47 (formerly, 244) of the Code of Civil Procedure, as the question involved in the order is not one between the parties to the suit, but is one between the auction-purchaser and the judgment-debtor, and the auction-purchaser is a necessary party. The judgment-debtor, by omitting to join him in the appeal, could not bring the case under section 47 of the Code.[1] But, as stated already, if the Court refuses an order setting aside the sale, the applicant can move the High Court under section 115 (formerly, 622) of the Code of Civil Procedure. The auction-purchaser also has been allowed to question the propriety of an order under section 174 of the present Act by motion to the High Court.[2] A suit to set aside a sale under the provisions of the Act is not maintainable.[3]

Act V., 1908.

Ditto.

Road-cess.

The provisions of section 174 are applicable to a sale held in execution of a decree for road-cess.[4]

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV. of the Indian Registration Act, 1877,[5] an instrument creating an incumbrance upon any tenure or holding

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[1] *Kishori Mohun Roy* v. *Sarodamani Dasi* [1896], 1 C. W. N. 30; *Subh Narain Lal* v. *Rajkumar Lal* [1898], 2 C. W. N. ccxliii.

[2] *Rahim Bux* v *Nundo Lal Gossami* [1887], I. L. R., 14 Cal. 321. Comp. *Jugobundhu Pattuck* v. *Jadu Ghose Alkushi* [1887], I. L R., 15 Cal. 47.

[3] *Kabilaso Koer* v. *Raghu Nath Sankar Singh* [1891], I. L R, 18 Cal 481.

[4] *Kishori Mohun Roy* v. *Sarodamani Dasi* [1896], 1 C. W. N. 30

[5] Act III. of 1877. The corresponding provisions of the present Registration Act (XVI. of 1908) are also prescribed in the same Part thereof.

which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Formerly, Act III, 1877 *now* XVI, 1908).

Application of section 175.

The provisions of section 175 apply to documents which are required by the present law to be registered, but which were executed before the commencement of Act VIII. of 1885, and the registration of which is not compulsory under section 17 of the Registration Act. Part IV. of the Registration Act deals with "the time of presentation." The date of the commencement of the present Act is the 1st November 1885 (see, *ante*, page 39).

Act XVI., 1908.

Notification of incumbrances to landlord.

176 Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding, and creating an incumbrance on the tenure or holding, shall, at the request of the tenant, or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

For rules by the Local Government as to the fees payable for the notifying of incumbrances to the landlord, *see* Rules 101 to 104 in Chapter VII. of the Government Rules in Appendix V. to this work (*post*). The manner in which notices of incumbrances should be served is regulated by Rule 3 of Chapter I. of the said Rules. The manner in which applications for notifying incumbrances to the landlord should be made and dealt with

is prescribed by rule 17 of the revised rules framed by the Registration Department under the present Act (printed in Appendix VI. to this work, *post*).

Power to create incumbrances not extended.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Object of section 177.

The object of this section is to preclude all apprehension as to the scope of the present Chapter; for the provisions of the Chapter, while they give certain rights for obtaining relief from the Court, do not enlarge the powers vested by law in any individual to create incumbrances.

CHAPTER XV.[1]

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (*1*) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements, and claim compensation for them.

(*2*) Nothing in any contract made between a landlord and a tenant since the 15th day of July 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land.

(*3*) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land;

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[1] None of the provisions of this Chapter have been extended to Orissa.

(*b*) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;

(*c*) take away the right of a *raiyat* to surrender his holding in accordance with section 86;

(*d*) take away the right of a *raiyat* to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-*raiyat* to sublet subject to, and in accordance with, the provisions of this Act;

(*f*) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) Nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V., be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of [horticultural or] orchard land with agricultural crops. Bengal Act I., 1907; E. B. Assam Act I., 1908.

[*Explanation.*—The expression 'horticultural land,' as used in proviso (*iii*), means garden land in the occupation of a proprietor or permanent tenure-holder, which is used *bonâ fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.] Bengal Act I., 1907; E. B. Assam Act I., 1908.

The words in brackets in clause iii. of the *proviso* and the whole *Explanation* were added by the Amending Acts of 1907 and 1908. Amendments.

This section does not apply to Orissa. Application of the section.

Section 178 is one of the most important sections in the Act. The main object underlying its provisions was to protect tenants from the consequences of their own acts. And it deals with four different classes of contracts, having regard to their nature and scope, namely—(1) contracts made before or after the passing of the Act for the purpose of depriving the tenant of Principle.

certain rights, either vested in the present, or likely to arise in the future, or of enabling the landlord to eject the tenant otherwise than in accordance with the provisions of the Act; (2) contracts made between the 15th day of July 1880,[1] and the passing of the Act to prevent a *raiyat* from acquiring, in accordance with the Act, an occupancy-right in the land; (3) contracts made after the passing of the Act; and (4) contracts relating to waste lands and to "horticultural or" orchard land let for the temporary cultivation of agricultural crops.

Supersession of former law.

Section 178 wholly supersedes the provisions of section 7 of Act X. of 1859 and section 7 of Bengal Act VIII. of 1869, by which *raiyats* could contract themselves out of the benefit of section 6 of each of those Acts, under which twelve years' cultivation gave rise to a right of occupancy.[2]

Sub-section (1), clause (b).

In one case[3] the Calcutta High Court seems to have considered that the provisions of clause (*b*) of sub-section (*1*) of section 178 of the present Act do not apply to a case where the suit, to enforce a contract by which the tenant had virtually agreed not to claim any right under section 6 of Act X. of 1859, was instituted before the present Act came into force. But this view was not followed in a subsequent Full Bench case.[4]

Sub-section (1), clause (c).

Where a tenant held a certain homestead land as part of a *raiyati* holding under a lease which contained a stipulation that he would quit whenever the landlord called upon him to do so, and the landlord sued for *khas* possession under the terms of the contract, it was *held*[5] that section 44, clause (*c*), page 231, *ante*, only applies when the lease is granted for a

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[1] The 15th July 1880 is the date of the publication of the Rent Commission's Report and the Draft Bill prepared by the Commission.

[2] *Bengal Indigo Co.* v. *Roghobur Das* [1896], I. L. R., 24 Cal. 272 (P. C.): L. R., 23 I. A. 158: 1 C. W. N. 83.

[3] *Moheshwar Pershad Narain Singh* v. *Sheobaran Mahto* [1887], I. L. R., 14 Cal. 621.

[4] *Debnarain* v. *Narendra Krishna* [1888], I. L. R., 16 Cal. 267.

[5] *Nundo Kumar Guha* v. *Sheikh Kali Kumuddi Hasi* [1898], 3 C. W. N. xlvii.

fixed term, and that, under section 178, sub-section (*1*), clause (*c*), the stipulation in the lease could not be enforced. As to section 178 (*1*) (*c*), *see* also notes to section 89, page 402, *ante*.

It is clear from this that there can be no eviction on the ground of forfeiture incurred by denying the title of the landlord.[1] But *see* also section 186A, *post*, and the cases cited thereunder.

In a recent case,[2] it was laid down that every one may forego a right introduced (into a covenant) for his benefit. . . . If, therefore, a party deliberately waives a legal right to which he is entitled, and no question of contravention of public policy or morality arises, such waiver is operative.

It is submitted that section 178 of this Act is entirely irreconcileable with this *obiter dictum*. (The construction of section 180, *post*, was under consideration in that case.)

As to the meaning of the words "local usage," *see* notes to section 183, *post*. Where local usage is proved entitling the tenant to transfer or bequeath his holding, any contract taking away that right will be inoperative. Sub-section (*3*) clause (*d*).

It has been *held*[3] that section 178 does not apply to a case where the landlord and the tenant have entered into an agreement that a transfer by the latter shall not be valid and binding until security to the satisfaction of the landlord had been furnished by the transferee, and such security has not been furnished: but this was a case of a tenure.

A stipulation in a lease restraining a lessee from purchasing the *jote*-rights of any tenant is enforceable.[4]

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[1] *Debirudin* v. *Abdur Rohim* [1889], I. L. R., 17 Cal. 196.
[2] *Jahander Bux* v. *Ram Lal Hasra* [1910], 14 C. W. N. 470.
[3] *Dinabundhu Roy* v. *W. C. Bonnerjee* [1892], I. L. R., 19 Cal. 774.
[4] *Watson and Co.* v. *Ram Chandra Datta* [1890], I. L. R., 18 Cal. 10.

Clauses (a), respectively, of sub-sections (1) and (3).

An agreement made for the purpose of ending some pending litigation before the passing of the Bengal Tenancy Act between a landlord and his tenant, which bars the acquisition of the right of occupancy during the lifetime of the tenant, does not come within the prohibitory terms of section 178 (*3*), clause (*a*), of the Act, nor does it come within the terms of section 178 (*1*), clause (*a*), of that Act.

Where, before the passing of the Bengal Tenancy Act, a landlord entered into an agreement with his tenant and the defendant that the former would hold certain lands under him for her life, and that, after her death, the landlord would take *khas* possession of them, and that her heirs, that is, the defendant or her heirs, would never raise any objection or prefer any sort of claim to them, it was *held*[1] that it was a valid contract under section 7, Act VIII. of 1869 (B. C.); that the tenant, during her lifetime, was not an occupancy-*raiyat;* that the defendant, never having been recognized by the landlord as tenant, was a trespasser; that the landlord could recover *khas* possession; and that no 'notice to quit' was necessary.

Sub-section (3), clause (*h*).

As to section 178, sub-section (*3*), clause (*h*), *see* notes to section 67, *ante*, pages 324. A contract for payment of a higher rate of interest than that provided for in section 67, if entered into before the passing of the Act, is not binding on the person who purchases a tenure or holding at an execution-sale.[2] Nor is it binding on the tenant if the period of the lease has expired, and he is holding over. But it binds the purchaser of a subsisting lease.[3]

A Full Bench of the Calcutta High Court has held[4] that clause (*h*), sub-section (*3*), section 178, does not control or affect the provisions of section 179 of this Act.

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[1] *Baul Chandra* v. *Nistarini Debi* [1906], I. L. R., 33 Cal. 136.

[2] *Alim* v. *Satis Chandra Chaturdhurin* [1896], I. L. R., 24 Cal. 37; *Kali Nath Sen* v. *Trailokhya Nath Roy* [1899], I. L. R., 26 Cal. 315.

[3] *Lal Gopal Dutt* v. *Manmatha Lal Dutt* [1904], I. L. R., 32 Cal. 258.

[4] *Motungini Debi* v. *Makrura Bibi* [1901], 5 C. W. N. 438 (overruling *Basanta Kumar Roy Chowdhry* v. *Promotha Nath Bhattacharjee* [1898], I. L. R., 26 Cal. 130).

Where, by the term of the *kabuliat*, an occupancy-*raiyat* agreed to pay, in excess of the rent, Road and Public Works cesses at the rate of 1 anna per rupee, and *puja kharach* at the rate of half an anna per rupee, according to the *kist* of rent, it was *held*[1] that the *puja kharach* was an *abwab*, and, so, could not be recovered by suit; but that the cesses would not come within the definition (*sic*[2]) of an *abwab* in section 74 (page 348, *ante*) of the Bengal Tenancy Act, and that the contract to pay more than the proportion payable by the tenant under the Road Cess Act was legal. Section 178 (*3*), clause (*h*), of the Bengal Tenancy Act, is applicable to a contract entered into after the passing of the Act, namely, the 14th March 1885, and the parties would not be competent to contract themselves out of the provision in section 67, which limits the interest to simple interest at 12 per cent. per annum by the device of making the rent payable otherwise than quarterly, and such a contract would not be enforceable, in so far as it may provide for payment of interest at a rate higher than 12 per cent.

The provisoes to section 178.

Proviso (i) saves from the operation of section 178 "the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land." Similarly, in proviso (iii), the expression used is "terms or conditions," whereas, in proviso (ii), the word "terms" is alone used. Whether the Legislature intended to make any difference in the scope of these provisions is not clear; but a certain difference is obvious; for, in a lease, "the terms" are quite distinct from "the conditions." The former relate to the amount of rent payable, the period for which the tenancy is created, and so forth; whereas "the conditions" embody provisions regulating the mode of enjoyment by the lessee of the subject-matter of the lease, or restricting his right to deal with the same.

Distinction between "terms" and "conditions" in a lease.

Narendra Kumar Ghose v. *Gora Chand Poddar* [1906], I. L. R., 33 Cal. 683 (*Surnomoyee Debee* v. *Koomar Puresh Narayan Roy* [1878] I. L. R., 4 Cal. 576, being referred to; and *Hemanta Kumari Debi* v *Jagadindra Nath Roy* [1894], I L R., 22 Cal 214 explained). *See*, also, notes to ss. 67 and 74, pp 324 and 348, *ante*.

[2] It will be noted that s. 74 does not contain any definition whatever of "*abwab*."

Permanent mukarrari leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant.

Scope of section 179.

Under Regulations V. and XVIII. of 1812, a proprietor of an estate is empowered to grant permanent *mukarrari* leases. Section 179 of the present Act extends this power to the holder of a permanent tenure "in a permanently-settled area."

Meaning of the expression "terms."

Ordinarily the expression "terms" will not include a condition providing for the payment of interest in default of payment of rent. But the Calcutta High Court has held,[1] as already stated, that section 179, which declares that a proprietor or holder of a permanent tenure in a "permanently-settled area" may make any "terms" with his tenant, is not controlled by the provisions of section 67 (*ante*, page 324) relative to interest on arrears of rent.

It has also been *held* in two cases,[2] although, apparently, not without some hesitation, that section 179 is not controlled by section 74 (*ante*, page 348), which declares to be illegal all impositions upon tenants under the denominations of *abwabs*, *mathaut*, or other like appellations. In the first of these cases, the learned Judges, after examining the nature of the claim, and holding that *chaukidari* tax which the *patnidar* had contracted to pay to the *zamindar* was not an *abwab* or illegal cess, proceeded to state as follows:—

In the above view of the case, it becomes unnecessary to consider the effect of section 179 of the Bengal Tenancy Act, which enacts that

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[1] *Matungini Debi* v. *Makrura Bibi* [1901], I. L. R., 29 Cal. 674: 5 C. W. N. 438 (followed in *Alimunnissa* v. *Shama Charan Roy* [1905], I L. R., 32 Cal. 749, p. 329, *ante*).

[2] *Assanulla Khan Bahadur* v *Tirthabashini* [1895], I L. R., 22 Cal. 680 (F. B.); *Krishna Chandra Sen* v. *Sushila Soondary Dassee* [1899], I. L. R., 26 Cal. 611: s. c., 3 C. W. N. 608.

"Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant." There is, no doubt, some repugnancy between this section and section 74 of the Act; but, whether, following the principle enunciated by Lord Justice JAMES in *Ebbs* v. *Boulnois*,[1] we regard the latter, which is a special provision, as a qualification of the former, which is a general one, or, adopting the rules stated by KEATING, *J.*, in *Wood* v. *Riley*,[2] that, of two repugnant clauses in a Statute, the last must prevail, we give effect to the latter, there seems to be good reason for thinking that section 179 is not controlled by section 74.

In the same case, the learned Judges also said:—

Section 54 of Regulation VIII. of 1793 recommended the consolidation of existing *abwabs* with the rent proper or *asul jama*, within a certain time, and section 55 prohibited the imposition of any new *abwabs* on *raiyats*. These provisions related to *raiyats* only, and could not affect intermediate tenure-holders like *patnidars*. Section 3 of Regulation V. of 1812, which was the provision applicable to the stipulation now under consideration, after authorising proprietors of land to grant leases to their dependent *taluqdars*, under-farmers, and *raiyats* in any form the contracting parties might think fit, prohibited the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mathaut*, or any other denomination, and declared "all stipulations or reservations of that nature" to be null and void. And section 11 of Bengal Act VIII. of 1869 made a landlord exacting any *abwab* liable in damages not exceeding double the amount exacted. Section 74 of the Bengal Tenancy Act, which now, in effect, takes the place of these provisions, enacts that "all impositions upon tenants under the denominations of *abwab*, *mathaut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void."

In the second case, the Court proceeded, it is submitted, upon a hypothetical consideration. The learned Judges said:—

Though it is somewhat difficult to suppose that the framers of the Act can have intended to allow proprietors or permanent tenure-holders to stipulate for the payment of *abwabs* by their tenants, yet it may be

[1] L. R., 10 Ch. App. 479 (484).

[2] L. R., 3 C. P. 26 (27).

that it was considered that an arrangement of this nature, so objectionable and liable to give rise to oppression in the case of ordinary *raiyats*, was fraught with less danger in the case of permanent *mukarrari* leaseholders. Anyhow, the words of section 179, "Nothing in this Act," are so wide that it seems impossible to resist the contention of the learned pleader for the appellant, and we are, therefore, constrained to give effect to it.

Effect of repeal of Regulation V. of 1812, section 3.

It will thus be seen that, although section 3 of Regulation V. of 1812 has been repealed by the present Act, the illegality of *abwabs* is not affected by the repeal. In fact, section 74 of the Act (*ante*, page 348) declares them to be illegal; and, although no definition is given of the word *abwab*, it is submitted that the considerations upon which the Full Bench[1] proceeded will determine the character of the demand. The word "terms" in section 179, therefore, must be taken to mean "legal" terms; and not any "term" whatsoever, whether legal or illegal.

It has been *held*[2] that, where a contract for the payment of an *abwab*, an item in the *thakurbari* account, was entered into before the Bengal Tenancy Act came into force, the *abwab* being illegal under section 3 of Regulation V. of 1812, the repeal of that section would not validate the contract so as to entitle the landlord or his assignee to recover the item in a Court of Justice. The judgment is as follows :—

In this case, we have held that a certain item of Rs. 11 included in the contract between the parties was an *abwab*, and therefore not recoverable by the plaintiff landlord. Thereafter the plaintiff obtained a Rule calling upon the opposite party to show cause why the decree of this Court should not be set aside on the ground that the contract is governed by section 179 of the Bengal Tenancy Act. It now appears that the contract was entered into on the 26th September 1879, that is, before the passing of the Bengal Tenancy Act. And, although certain sections of the Regulations dealing with *abwabs* were repealed by that

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[1] *Assanulla Khan Bahadur* v. *Tirthabasini* [1895], I. L. R., 22 Cal. 680, F. B. (*see* pp. 686, 687).

[2] Rule 1233 of 1902, decided 22nd December 1902—*Roy Budhu Singh Dhuduria* v. *Sotish Chundra Sarkar*.

Act, nevertheless it is provided in section 2, clause (4), that "the repeal of any enacment by this Act shall not revive any right, privilege, matter, or thing not in force or existing at the commencement of this Act." It is thus clear that section 179 has no retrospective effect, so as to validate an agreement which, in a certain particular, was not lawful at the time when it was made. That being so, the ground upon which the Rule was granted is not tenable, and we accordingly discharge the Rule.

This view has been followed in a later case,[1] in which it was *held* that the provisions of section 179 do not apply to the case of a permanent tenure created in 1860, and that, therefore, the landlord cannot recover any *abwab* from the tenant [*see* section 2 (4), page 50, *ante*].

Validity of terms imposing fixed rate of rent on tenant.

If the holder of a permanent tenure, which is not held at rates fixed in perpetuity, were to grant a lease creating an under-tenure in a permanently-settled estate at a rate fixed in perpetuity, and if the tenure-holder were ejected, and the tenure were resumed by the proprietor, the fixed rate agreed upon with the under-tenure-holder would not be binding on the proprietor, for the tenure-holder could not confer a right which he did not himself possess; but the fixed rate would be binding on the tenure-holder himself, his heirs, assigns, and successors. In the case of temporarily-settled estates, section 192 (*post*) empowers Revenue-officers to alter the rents of tenures and holdings when a settlement of land-revenue is being made, notwithstanding any lease or other contract purporting to authorize the tenant to hold at a particular rate of rent.

Permanent tenures and mineral rights.

The Privy Council has lately *held*,[2] following Field's "Introduction to the Regulations" (p. 36), that a *zamindar* must be held to be the owner of the underground rights appertaining to a tenure granted by him, in the absence of evidence that

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[1] *Apurna Charan Ghosh* v. *Karam Ali* [1906], 10 C. W. N. 527.
[2] *Hari Narain Singh* v. *Sriram Chakravarti* [1910], 14 C. W. N. 746.

he parted with them. This overrules the High Court decision,[1] between the same parties, in which it was laid down that, in the absence of express reservation, the grant of a permanent tenure invests the grantee with every right that can appertain to him, subject to the quit-rent; and that the grantee can do what he likes with the land short of destroying it.

Their Lordships of the Privy Council entertained some doubts as to whether it was proved that the alleged tenure-holders had in this case permanent, heritable, and transferable rights.

For the meaning of "permanent tenure," *see* section 10 (page 95, *ante*) and notes thereunder

Mukarari lease.

A perpetual *mukarari* lease implies that the rent is fixed in perpetuity, and that the tenancy is permanent, heritable, and transferable.[2] Under the definition given in section 3 (*8*) (page 69, *ante*) and the provisions of section 11 (page 97, *ante*), a permanent tenure must be heritable and transferable, but need not necessarily be held at a fixed rent. Such a tenure may arise by custom and course of dealing,[3] even in the absence of a specific document creating the tenure.

The absence of the words "*maurusi mukarari*" in a lease does not necessarily indicate that it was not the lesser's intention to grant a permanent lease.[4]

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[1] *Sriram Chakravarti* v. *Hari Narain Singh* [1905] I. L. R., 33 Cal. 54, which was followed in *Megh Lal Pandey* v. *Rajkumar Thakur* [1906], I. L. R, 34 Cal. 358, referring also to *Shama Charan Nandi* v. *Abhiram Goswami* [1906], I. L. R., 33 Cal. 511; and distinguishing *In re Purmanandass* [1882] I. L. R., 7 Bom. 109; *Prince Mahomed* v. *Dhojamani* [1905], 2 C. L. J. 20; *Tituram* v. *Cohen* [1905], I. L. R., 33 Cal. 203; and *Girish Chandra* v. *Sirish Chandra* [1904], 9 C. W. N. 255.

[2] *Mohanand Sahai* v. *Syedunissa Bibi* [1908], 12 C. W. N. 154.

[3] See *Naba Kumari Debi* v. *Behari Lal Sen* [1907], (P. C.) I. L. R., 34 Cal. 902 (following *Upendra Krishna Mandal* v. *Ismail Khan Mahomed* [1904], I. L. R., 32 Cal. 41; *Nilratan Mandal* v. *Ismail Khan Mahomed* [1904], I. L R, 32 Cal. 57; and *Ram Chunder Dutt* v. *Jugesh Chunder Dutt* [1873], 12 B. L. R. 229, 235).

[4] *Promoda Nath Roy* v. *Srigobind Chowdhry* [1905], I. L. R., 32 Cal. 648.

Some of the cases just alluded to arose out of lands to which the Bengal Tenancy Act does not apply, strictly speaking; but the principles laid down are of quite general application, and do not depend on any specific act.

See notes on section 50 (page 249, *ante*) on the question of fixity of rents of tenures, and when it may be presumed.

A *kaimi maurasi patta* has been *held*[1] not to be a *mukarari* lease.

A grant was made of certain villages by the proprietor of an impartible Raj to his wife, in *istemrari mukarari*, at a fixed annual rent, the deed containing the following covenant: "I, the declarant, or my representatives, have and shall have no claim, right, or dispute thereto, except the aforesaid reserved rent." *Held*[2] (1) that the use of the words "*istemrari mukarari*" in the lease was not sufficient to create a permanent and hereditary tenure; and (2) that the words excluding the claim of, or right of interference by, the grantor or his representative did not necessarily import the creation of a permanent and hereditary tenure, but might fairly be construed as only to mean that the grantor or his representatives would not have the power to disturb the grantee during her lifetime.

The holder of a permanent *mukarari* lease cannot claim an abatement of rent under section 52 (*1*) (*b*), page 266, *ante*, for reduction of area by diluvion.[3]

Utbandi, chur and dearah lands.

180. (*1*) Notwithstanding anything in this Act, a *raiyat*—

(*a*) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom, and for the time being let under that custom, or

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[1] *Gayartulla* v. *Girish Chandra* [1908], 12 C. W. N. 175.
[2] *Agin Bindh Upadhya* v. *Mohan Bikram Sah* [1903], I. L. R., 30 Cal. 20.
[3] *Nanda Lal Mukherji* v. *Kymudin Sardar* [1905], 9 C. W. N. 886.

(*b*) who holds land of the kind known as *chur* or *dearah*,

shall not acquire a right of occupancy,—

in case (*a*), in land ordinarily held under the custom of *utbandi*, and for the time being held under that custom, or

in case (*b*), in the *chur* or *dearah* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) Chapter VI. shall not apply to *raiyats* holding land under the custom of *utbandi*, in respect of land held by them under that custom.

(*3*) The Collector may, on the application of either the landlord or the tenant, or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *dearah* land within the meaning of this section; and thereupon all the provisions of this Act shall apply to the land.

Utbandi. In a case in which the nature and incidents of the *utbandi* system were discussed by the High Court in 1890,[1] it was said in the judgment of PETHERAM, *C. J.*, and TOTTENHAM, *J.*, "there seems to be some difference of opinion regarding it (the *utbandi* system). . . . . Several Judges who have sat in this Court have stated their own opinions on the subject, and their opinions have not been quite uniform. Perhaps our safest guide in the matter is what is to be found in special reports made by Revenue-officers."

[1] *Beni Madhub Chuckerbutty* v. *Bhuban Mohun Biswas* [1890], I. L. R., 17 Cal. 393.

Utbandi in Nadia.

The *utbandi* system in Nadia was described by the Collector, in July 1902, thus: "*Utbandi* means 'assessment according to cultivation,' from *uthit* = risen—cultivated (*cf. patit* = fallen—uncultivated) and *bandi*=*bandabust*—assessment. . . . . The most authoritative dictum of the High Court on this subject would appear to be that by PETHERAM, *C. J.*, and TOTTENHAM, *J.*, in the case of *Beni Madhub Chuckerbutty* v. *Bhuban Mohan Biswas*,[1] reported in the Calcutta Law Reports, Volume XVII. The Hon'ble Judges then rejected the earlier opinions of Judges which 'have not been quite uniform,' and discussed those of Sir W. W. Hunter and of Sir Henry Cotton, and the reports of the Collectors of the Presidency Division, submitted by the Commissioner to Government in September 1884, and concluded that 'These descriptions of *utbandi* do seem to refer rather to particular areas taken for cultivation for limited periods, and then given up, than to holdings of which parts are cultivated, and other parts lie fallow, while the rent for the whole is assessed year by year with reference to the quantity within the holding under cultivation in that year. A holding of the latter description hardly seems to answer to the general conception of *utbandi*. . . . .' This description coincides with what I have found *utbandi* to be in the present day."

The Commissioner of the Presidency Division wrote in September 1902: "In Nadia, there are two broadly different classes of land-tenure known as (1) the *jamai*, and (2) the *utbandi* systems, respectively. *Jamai* lands are held as ordinary occupancy-holdings, or holdings at fixed rates, subject to all the incidents of such holdings as defined in the Tenancy Act. As to what the *utbandi* system precisely is, there are somewhat discrepant accounts; and, in fact, the conditions of that tenancy appear to vary in different parts of the district, and in different estates in the same parts..... Broadly speaking, it may be said that the *utbandi* system is a tenancy-at-will. The amount of rent of

[1] [1890] I. L. R., 19 Cal. 393.

utbandi land is regulated by, and varies according to, the area which the tenant may cultivate from year to year, the tenant being at liberty to relinquish at the end of the year any portion of the land cultivated in the previous year that he may think fit, or to take up new land with the landlord's consent, express or implied, and the landlord being at liberty to oust the tenant from the whole or any part of his *utbandi* land that he may think fit at the end of the year. This is the normal type of *utbandi* tenure :—

The tenants of *jamai* lands are not different and distinct persons from those occupying *utbandi* lands. The same individuals usually hold some land on the *jamai* and some on the *utbandi* system in one and the same village or estate; but I can find no clear elucidation of principle on which the village-lands have been divided into *jamai* and *utbandi* lands, respectively. In point of fact, there appears to be no such principle. One would be inclined to suppose on *à priori* consideration that the lands situated in close proximity to village-sites and lands enjoying superior advantages of fertility, which have been under cultivation from time immemorial, would constitute *jamai* lands held on the same tenure as ordinary *raiyati* land elsewhere, and that the *utbandi* land would consist of the outlying poorer lands, which require periodical fallowing for renovation. In fact, however, it is reported that there is generally no difference between the quality of *jamai* and *utbandi* land, and that even village-sites are sometimes held on the *utbandi* system. It might also be supposed that the *utbandi* lands being *ex-hypothesi* of inferior quality, the rent paid for them would be less than that paid for *jamai* land; but, in fact, the rent-rates paid for *utbandi* are double those paid for *jamai* land.

There appear to be different systems, which are all alike, known as the *utbandi* system :—

(*a*) In some cases *utbandi* land is let for only one year.

(*b*) In others for three years.

(*c*) In others it is held by the same tenant continuously, that is to say, though the land is called *utbandi*, the tenant cultivates it continuously, and does not allow any part of it to lie fallow.

(*d*) In some cases, part of the *utbandi* land is periodically fallowed.

(*e*) In others it is all cultivated continuously.

(*f*) In some cases rent is paid on the area cultivated according to a recognized and established rate.

(*g*) In others, the rate varies from time to time, and is regulated by agreement with the tenant.

(*h*) In some cases, the rate varies with the crop grown.

(*i*) In others, the rate is independent of the crop.

(*j*) In some cases, the tenant has to obtain the landlord's previous consent before taking up and cultivating *utbandi* land.

(*k*) In other cases, express consent is not necessary.

But the characteristic of all the different systems is, that the tenant by law acquires no rights of occupancy in *utbandi* land till he has held it for 12 years, and in practice..... has either to pay whatever rent the landlord chooses to demand, or vacate the land...

The system probably originated from the mutual convenience of landlord and tenant when land was abundant, population sparse, and fallowing profitable. As population and the demand for land increased, shifting cultivation developed into settled cultivation elsewhere, but, in Nadia, the transition was retarded partly by the comparative lightness and poverty of the soil, and partly by the requirements of indigo cultivation, which was extensively practised in this district in former days, for the successful growth of indigo needed more frequent change of soil in Nadia than in the richer lands of the Bihar and other districts. Analogous archaic systems of land-tenure may be traced in Gaya, parts of Orissa, and Chota Nagpur..... .....

The Bengal Government, when the Tenancy Bill was under consideration, proposed to treat *utbandi* lands as ordinary *rai-*

yati lands were treated, that is to say, to presume that tenants of *utbandi* lands were settled *raiyats* if they had held any land in the village for 12 years, and, as settled *raiyats*, to declare that they had occupancy-rights in all lands held by them in the village.[1] The Select Committee did not, however, agree to that proposal, and applied the provisions relating to *chur* and *dearah* lands to *utbandi* land also, merely remarking that it was admitted in the course of their discussions that *utbandi* lands required special treatment.[2] While, however, empowering the Collector, on the application of either landlord or tenant, or on a reference from the Civil Court, to declare that any land shall cease to be *chur* or *dearah* land, whereupon all the provisions of the Tenancy Act shall apply to such lands,[3] no such power was given to the Collector to declare that the custom of *utbandi* shall cease in respect of any land known as such.

The effect of section 180[4] of the Tenancy Act is, that a tenant cannot acquire occupancy-rights in a plot of *utbandi* land unless and until he has held the plot for 12 years continuously. In fact, however, landlords and *raiyats* believe that occupancy-rights cannot ever be acquired in *utbandi* land. Under this section as it now stands, the High Court[5] were 'not prepared to hold that the cultivation at various times, and under separate (implied) agreements on each occasion, such periods not being continuous, although of the same piece of land, would confer the right (of occupancy) upon the ground that the first of such periods commenced more than 12 years before the alleged dispossession (of the tenant).'"

The Bengal Tenancy Act made no change in the previous law relating to *utbandi* land, which permitted occupancy-rights

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[1] Government Report, 1884, Vol. I., p. 59, para. 80.
[2] Selections, p. 241, para. 92.
[3] *See* s. 180 (3), *ante*, p. 742.
[4] *Ante*, p. 741.
[5] *Beni Madhub Chucherbutty* v. *Bhuban Mohan Biswas* [1890], I. L. R., 17 Cal. 393. *See* also *Premanund Ghose* v. *Surendranath Ray* [1873], 20 W. R. 329.

to accrue in every plot of land, whether *utbandi* or *jamai*, if the plot had been held continuously for 12 years.

Utbandi land has sometimes been loosely spoken of as being the same thing as *khas khámár*,[1] but the nature and incidents of *khámár*, as defined in the Bengal Tenancy Act (sections 116 and 120, *ante*, pages 533 and 537), are entirely different from those of *utbandi* land.

Naksan or loksan.

A former Collector of Nadia described *loksan* as being *jamai* land relinquished by *raiyats*, and not re-let to fresh *raiyats*. The Collector reported in July 1902 that there is no difference between *naksan*, properly *loksan*, land and *utbandi*, and that *utbandi* holdings are *not* "holdings of which parts are cultivated and other parts lie fallow, while the rent of the whole is assessed year by year with reference to the quantity within the holding under cultivation in that year,"[2] that is to say, the parts that lie fallow, with the parts that are cultivated, do not constitute one holding, and are not "welded into one unit."

Chapter VI. of the Bengal Tenancy Act does not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under the custom[3] [*see* section 180 (*2*), *ante*, page 742], so that a *raiyat* may be ejected from the *utbandi* land though he may be willing to pay a fair and equitable rent, since section 44 (*ante*, page 226) does not apply; but, if a tenant of *utbandi* land refuses to vacate it voluntarily, he cannot be ejected except in execution of a decree, since section 89 (*ante*, page 402), applies to all tenants save holders of service-tenures, to whom, it has been *held*[4] that that section does not apply.

It has been *held*[5] that the presumption, which is created by section 20, clause (*7*), of the Bengal Tenancy Act, in respect of that section, could not be applied to section 180 of that Act.

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[1] *Mirzan Biswas* v. *Hills* [1865], 3 W. R. (Act X) 159.

[2] Doubts on this point were raised in the judgment in the case of *Beni Madhab Chuckerbutty* v. *Bhuban Mohan Biswas* [1890], I. L. R., 17 Cal. 393.

[3] *Jahander Box* v. *Ram Lal Hazra* [1910], I. L. R., 37 Cal. 449.

[4] *Mokbul Hosain* v. *Ameer Sheikh* [1897], I. L. R., 25 Cal. 131.

[5] *Beni Pershad Koeri* v. *Chatturi Tiwari* [1906], I. L. R., 33 Cal. 444.

In *dearah* or *chur* land, the persons who alleged that he had been for twelve continuous years in possession would have to prove that allegation; and, further; that section 4, Regulation XI. of 1825, could not apply, there being no pre-existing right to the land in the tenants to which any right to the later accretion can be said to be annexed, the tenants being held to be annual tenants.

Chur and dearah lands.

The terms *chur* and *dearah* are not defined in the Bengal Tenancy Act. *Chur* land is described in the preamble to Regulation XI. of 1825 thus:—

In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, *churs* or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side. Similar instances of alluvion, encroachment, and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by the means above mentioned are a frequent source of contention and affray; and, although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming *churs* or other lands gained in the manner above described.

Dearah.—The term *dearah* is popularly used, and is used in this Act, in the same sense as *chur*; but a *dearah*, according to Wilson's Glossary, is an island formed in the bed of a river.

In paragraph 21[1] of the Bengal Government Report of the 27th September 1883 on the Bengal Tenancy Bill, it is said:—

Dearah or alluvial lands and new reclamations are quite exceptional in character.....They may be worthless this year, and most productive the next. According to custom in various parts of the country, alluvial lands are rented at merely nominal rates on formation (though they are

[1] Selections, p. 223.

then usually unproductive sand) in order that the *raiyat* may establish some claim to hold them when the soil has fully formed. The full formation may be brought about by a rich deposit in a single season. It would be very hard, then, on a landlord if he were precluded from doing more than doubling the nominal rent for such land within ten years. In the interests of the landlords generally, therefore, and having full regard to what is due to the *raiyats*, the Lieutenant-Governor would suggest that partially-formed alluvial accretions and new reclamations be excepted from the effect of these sections [*i. e.*, sections 76 and 78 of the Bill as it then stood, by which it was proposed to enact that a rent enhanced by suit should not be more than double the rent previously payable, and that rent enhanced should not be enhanceable again for ten years]. For accretions or reclamations which are fully formed and ordinarily productive, there is no need to provide exceptional treatment.

Again, in paragraph 78[1] of the Bengal Government Report of the 15th September 1884 on the Tenancy Bill, it was said that the terms *chur* and *dearah* were used with laxity, being used sometimes with reference to formations of old date and sometimes with reference to recent formations; and that it was specially necessary "to avoid suggesting the idea that (consistently with the landlord's just rights) the occupancy *status*, with its concomitant attributes, may not be acquired in the future, as in the past and present, on accreted lands."

Collector empowered to declare that any land has ceased to be chur or dearah.

Section 180, as enacted, puts *útbandi* lands on the same footing generally as *chur* and *dearah* lands, but provides [sub-section (*3*)] that the Collector may, on the application of the landlord or tenant, or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *dearah* land, whereupon all the provisions of the Act are to apply to such land.

Collector not empowered to declare that land shall cease to be utbandi.

No such power is given to the Collector to declare that *útbandi* land shall cease to be *útbandi*, or that the custom of *útbandi* shall cease to prevail in respect of any such land.

Considerations which should guide the Collector in declaring that land shall cease to be chur or dearah land.

The Act does not give any indication of the considerations which should guide the Collector in declaring that any particular land has ceased to be *chur* or *dearah* land. But, from the extracts

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[1] Selections, p. 370.

above given, it would appear that the intention was, that, when lands known as *chur* or *dearah* are fully formed, and are no longer liable to annual inundation, and the cultivation is no longer of a shifting or transitory character, and the land is paying a fair rent with reference to other land of similar quality in the locality, the Collector would be justified, on the application of the landlord or tenant, or on a reference from the Civil Court, in declaring that the land has ceased to be *chur* or *dearah*.[1]

Effect of section 180 (1).

The effect of section 180 (*1*) is, (1) that, where a tenant holds any particular plots of *útbandi*, *chur*, or *dearah* land continuously for twelve years, he acquires occupancy-rights in such plots; (2) that, where he has held any particular plots for less than twelve years, he has not occupancy-rights in those plots; and (3) that, in respect of *útbandi* land in which he has not acquired occupancy-rights, he is a mere tenant-at-will, but cannot be ejected except by decree of Court (*see* section 89, *ante*, page 402). He need not give any notice of abandonment.[2]

Application of Chapter VI. to utbandi, chur, and dearah lands.

It has lately been *held*[3] that tenants holding *chur* lands are liable, until such time as they have acquired occupancy-rights therein, to pay rents at rates agreed upon between them and the landlord irrespective of the provisions of section 43 of Chapter VI. The introductory words of sub-section (*1*) of section 180 govern the whole of the remaining sub-section including the clause about payment of rent during the period preceding the acquisition of a right of occupancy, so as to exclude such cases from the operation of section 43 of the Act..... If the tenants in question had acquired occupancy-rights in the *chur* lands before entering into certain agreements for the payment of enhanced rents, these agreements would be invalid under section 29 of this Act. But, if they had not acquired such rights of occupancy, the agreements

[1] The Calcutta High Court, in a case before it, remarked that "a *chur*..... is necessarily a shitting or transitory piece of property."—*Shama Sunker Chowdhry* v. *Moonshe Mahomed Ishmail* [1863], II. Sev. 943, cited in Field's Regulations, p. 589.

[2] *Amrita Lal* v. *Giridhar Ghose* [1907], 11 C. W. N. 581.

[3] *Jahandar Bux* v. *Ram Lal Hazra* [1910], 14 C. W. N. 470; I. L. R., 37 Cal. 449.

were valid under section 180. Section 43 of Chapter VI. would not apply to such cases.

In the same case, it was *held* that, when a settlement-holder bound himself, in his *kabuliyat* with Government, *not* to enhance the rents of his under-tenants, the under-tenants could not plead that clause of the *kabuliyat* as a defence in suits for rent at enhanced rates, to which they were alleged to have agreed, but, in respect of which, no registered agreements had been taken, and which was denied by the tenants.

The presumption of section 51 (page 264, *ante*), as to holding over, must be *held* to apply to *útbandi*, *chur*, and *dearah* lands.

Proprietary right in chur or dearah land.

For the law relating to proprietary right in, and the right to take possession of, *chur* or *dearah* lands, *see* Regulation XI. of 1825 and commentary thereon, in Field's Regulations, pages 580 to 606.

A somewhat similar tenancy is described at page 64, para. 204, of the Purnea Final Report (1908).

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure, which, before the passing of this Act, was not capable of being transferred or bequeathed.

Ghatwali and service-tenures—meaning of.

Service-tenures (*chakaran*) are found in some parts of the country, being a remnant of the old system under which public officers and even the servants of the village were paid by grants in land instead of by money-salaries. Somewhat similar are the *ghatwali* tenures, found in Birbhum and elsewhere, granted for keeping the mountain passes against the Mahratta and other invaders.[1]

"*Ghat*" meaning "a landing place," "the terminus of a ferry on either side of the river," "a mountain pass." *Ghatwal* is a person in charge of a ferry, or of a "mountain pass."[2]

Ghatwals of Birbhum.

The *ghatwali* tenures of Birbhum have been the subject of a special Regulation, XXIX. of 1814, as to which and the

[1] Field's Regulations, pp. 40, 41.

[2] *Ibid*, p. 41, foot-note.

rulings of the High Court relating to *ghatwals* generally, *see* Field's Regulations, pages 429 to 440.

Law applicable to ghatwali tenures.

Section 181 does not exclude *ghatwali* and other service-tenures from the purview of all the provisions of the Bengal Tenancy Act. It provides merely that nothing in the Act shall affect any incident of these tenures, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of the Act, was not capable of being transferred or bequeathed. Were it not for the declaration made by this section, *ghatwali* and other service-tenures, whether they be strictly "tenures" or "*raiyati* holdings at fixed rates" within the meaning of the Act, would be rendered transferable and heritable by sections 11 and 18, pages 97 and 113, *ante*. Section 181 is intended especially to guard against transferability. But such provisions of the Bengal Tenancy Act as do not affect the incidents of *ghatwali* or other service-tenures, such as the provisions relating to recovery of rent, distraint, survey, and record-of-rights, &c., appear to be applicable to *ghatwali* and other service-tenures, as well as to ordinary tenures and *raiyati* holdings. Were it otherwise, the rent of *ghatwali* and other service-tenures could only be realized under the law of contract, save in places where Regulation XXIX. is in force, where special provision is made for the realisation of rents of *ghatwali* tenures by sections 3, 4, and 5 of that Regulation.

The presumption of section 50 (page 249, *ante*) can arise[1] in respect of these tenures. Occupancy-rights cannot be acquired in *ghatwali* lands[2] by tenants holding under *ghatwals*.

Places where Regulation XXIX. of 1814 is in force.

Regulation XXIX. of 1814 was enacted for the district of Birbhum only, but has since been extended to the Santhal Parganas,[3] and to Pargana Barabhum in the district of Manbhum.[4]

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[1] *Gauri Kant* v *Ram Gopal* [1905], 2 C. L. J. 379.

[2] *Upendro Nath Hazra* v. *Ram Nath Chaudhri* [1906], I. L R., 33 Cal. 630 (*Mohesy Manjhi* v. *Prem Krishna* [1904]. 1 C. L. J. 138, referred to).

[3] By Reg III. of 1872, s. 3. as amended by Reg III of 1899, s 3.

[4] Notification No. 1246-L. R. dated the 7th March 1903, published in the *Gazette of India* of the 14th *idem*, Pt. I., p. 191.

There is considerable variety in the tenures known under the general name of *ghatwali* in different parts of the country, but it was said by the Calcutta High Court in one case[1] that— Variety of ghatwali tenures.

They all agree in this—that they (*i. e.*, *ghatwali* tenures) are grants of land situated on the edge of the hilly country, and held on condition of guarding the *ghats* or passes. Generally, there seems to be a small quit-rent payable to the *zamindar* in addition to the service rendered, and with the view of marking the subordination of the tenure. But, in some *zamindaris* and *patnis*, these tenures are of a major, in other of a minor, character. Sometimes the tenure of the great *zamindar* himself seems to have been originally of this character. More frequently large tenures, consisting of several whole villages, are held under the *zamindar*. And in other places, *e. g.*, in Bishenpore, as explained by Harington (Analysis, Volume III., page 510), the *sirdar* and superior *ghatwals* have small and specific portions of land in different villages assigned for their maintenance. These last, says Harington, are of a nature analogous to the *chakaran* assignments of land to village-watchmen in other districts. But he goes on to explain that the *ghatwali* tenure differed essentially from the common *chakaran* in two respects—*first*, that the land was not liable to resumption at the discretion of the landholder, nor the assessment to be raised beyond the established rate; and, *secondly*, that, although the grant is not expressly hereditary, and the *ghatwal* is removeable for misconduct, it is the general usage, on the death of a faithful *ghatwal*, to appoint his son, if competent, or some other fit person in his family, to succeed to the office.

For a description of *ghatwali* tenures and their incidents, as found in the Deoghur Sub-division of the Santhal Parganas, *see* Mr. Heard's *Ghatwali* and *Mul-raiyati* Tenures, 1900. Description and incidents of ghatwali tenures.

It has been *held*[2] by the High Court that section 89 (*ante*, page 402) did not apply to a particular service-tenure in Murshidabad which formed the subject of litigation. In that case, BANERJEE, *J.*, said :— Applicability of section 89 to ghatwali tenures.

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[1] *Munrunjun Singh* v. *Rajah Lelanund Singh* [1865], 3 W. R. 84; Field's Regulations, pp. 434, 432.

[2] *Mokbul Hossain* v. *Ameer Sheikh* [1897], I. L. R., 25 Cal. 131. This view has been followed in other cases—*Ansar Ali* v. *Grey* [1905], 2 C. L. J. 403; *Anandamoyi* v. *Lakhi Chandra* [1906], I. L. R., 33 Cal. 319. But one co-sharer cannot bring a suit for partial ejectment of a service-tenure-holder, or for proportionate rent in lieu of services (*Ghulam Mohiudin* v. *Khairan* [1904], I. L. R., 31 Cal. 786.)

I am of opinion that the application of that section to service-tenures must be taken to be limited by section 181 of the Act, which enacts that nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure. It has been found, as a fact, that liability to dismissal at the will of the *zamindar* is an incident of the particular service-tenure now under consideration. That being so, the question is, whether, notwithstanding that this is an incident of this service-tenure, and notwithstanding that section 181 enacts that nothing in the Act shall affect any such incident, it is still open to the plaintiff to claim the benefit of section 89. I think the question must be answered in the negative For, if, notwithstanding all this, section 89 is to have operation, then section 181 would become so far nugatory: and that could not have been intended by the Legislature.

It is to be observed that, in the case mentioned, liability to dismissal at the will of the *zamindar* was found as a fact to be an incident of the particular tenure under consideration; but it does not follow that section 89 does not apply to service-tenures of which liability to dismissal at the will of the *zamindar* is not found to be one of the incidents. The terms and conditions of each tenure must be considered by itself. No general rules can be laid down as to the law applicable to the tenures. Generally the Contract Act and Transfer of Property Act are to be followed in dealing with such cases.

Ground for ejectment from a service-tenure.

Refusal to perform services is a ground for ejectment, and no notice is necessary. Denial of the landlord's title entails forfeiture of the tenancy. The Transfer of Property Act applies to such cases,[1] not the Bengal Tenancy Act. But it is not a ground of forfeiture that the services are no longer needed, provided that the tenant is willing and able to perform them. *See* foot-note 3, page 756, *post.*

Mukarrari leases.

It has recently been *held*[2] that a *ghatwal* generally has no power to grant a *mukarrari* lease.

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[1] *Anandamoyi* v. *Lakhi Chandra* [1906], I. L. R., 33 Cal. 329 (*Haidri Begam* v. *Nathu* [1894], I. L. R., 17 All. 45, and *Ansar Ali* v. *Grey* [1905], 2 C. L. J. 403, referred to).

[2] *Narain Mullick* v. *Badi Roy* [1901], 6 C. W. N. 94.

As to the history of the law relating to *chakaran* or service-lands generally, *see* Mr. McNeile's Report on the Village Watch of the Lower Provinces, 1866.

Service-lands generally.

The law in force relating to *chaukidari chakaran* lands is contained in Bengal Act VI. of 1870, sections 48 to 61.

Chaukidari chakaran lands.

Right of occupancy can be acquired under Act X. of 1859 even in *chaukidari chakaran* lands,[1] and is not destroyed on their resumption. Where such lands were resumed, and settled with tenants by a person who had no right to deal with the lands, and these tenants claimed the rights of occupancy or non-occupancy *raiyats* against the real owner alleging that they had all along acted *bonâ fide*, it was *held*[2] that they had not acquired any rights whatever; and that the principle laid down in another case[3] (*see* notes to section 157, page 656, *ante*), that "tenants inducted on lands by a person in *de-facto* possession, though without title, are not trespassers," did not apply.

Right of occupancy in chaukidari chakaran lands.

In the same case,[2] the opinion was expressed that, when *chaukidari chakaran* lands are resumed and transferred to the *zamindar*, section 181 has no further application to them: they become his *zerait* lands, and can be dealt with by him as *mâl* or *zerait* lands at his option. It is submitted that it is extremely difficult to reconcile this *obiter dictum* with the tests laid down in section 120 (page 537, *ante*), with the *ratio decidendi* of the case[1] above alluded to, and with section 51 of Act VI. (B. C.) of 1870.

The question of the rights of landlords and *patnidars* respectively over resumed *chaukidari chakaran* lands was recently discussed at length.[4] It would seem that this question

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[1] *Ram Kumar* v. *Ram Newaj* [1904], I. L. R., 31 Cal. 1021.

[2] *Junab Ali* v. *Rakibudin* [1905], 9 C. W. N. 571.

[3] *Binad Lal* v. *Kalu Pramanik* (1893], I. L. R., 20 Cal. 708 (also distinguished and explained in *Upendra Narain* v. *Pratap Chunder* [1904], I. L. R., 31 Cal 703).

[4] See *Rajendra Nath Mukherjee* v. *Hira Lal Mukherjee* [1910], 14 C. W. N. 995; *Gopendra Chandra Mitter* v. *Tara Prosanna Mukherji* [1910], 14 C. W. N. 1049

must be decided with reference to the terms of the *patni* leases or other agreements between landlord and *patnidar*.

It was also *held*[1] that, in such cases, there may be a merger of the *patni* in the proprietary right, differing from the view previously held.[2]

Kharagpur *Ghatwalis.*

A detailed account of the Kharagpur *ghatwali* tenures (in South Monghyr and South Bhagalpur) is given in the Bhagalpur Final Report (1910), Chapter III. It was *ruled*[3] by the Privy Council in 1873 that the *zamindar* had no right to put an end to the tenure, whether the services were required or not, as long as the grantees were willing and able to perform the services.

Nearly all the *ghatwals*, however, compromised with the *zamindar*, and received the status of *mukarraridar*. No Court decisions have been given about the transferability and the inalienability of these tenures. Probably those who have now the status of *mukarraridars* are not legally distinguishable from ordinary permanent tenure-holders at fixed rates of rent.

Jagirs akin to ghatwali tenures in Purneah.

In the Purnea Final Report, pages 64 and 65, paragraphs 207 and 208, some details are given of the present conditions under which *jagirs*, akin in their origin to *ghatwali* tenures, are now held. In many cases it was found that they hold on a peppercorn rent or "*nazarana*," which does not appear to be a true agricultural rent.

Another sort of *jagir* for keeping wild elephants from damaging a *zamindari* was the subject of some litigation[4] and the view expressed by the Privy Council in the famous Kharagpur case[3] above alluded to was followed.

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[1] *Ganada Dasi* v. *Maharaja of Burdwan* [1910], 14 C. W. N. ccxcii.

[2] *Jibanti Nath Khan* v. *Gokhul Chunder Chowdhry* [1891], I. L R, 19 Cal. 760 *See* p. 145, *ante*, foot-note (1).

[3] *Lilanand Sing* v. *Government of Bengal*, 4 W. R. (P. C) 77 (followed in *Forbes* v. *Mir Mahomed*, 14 W. R. 28 (P. C.); and *Manoranjan Sing* v. *Lilanand Sing*, 3 W. R. 84 (P. C.).

[4] *Forbes* v. *Mir Mahomed*, 14 W. R. (P. C.) 28.

182. When a *raiyat* holds his homestead otherwise than as part of his holding as a *raiyat*, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a *raiyat*. **Homesteads.**

The case-law relating to lands used for building, &c., before the passing of this Act, was discussed in a note by Mr. Field dated 24th December 1879.[1] **Former case-law.**

The Rent Commission drew up elaborate provisions regarding the use of land for building purposes, which they justified in paragraphs 108-113 of their Report; but, as the present Act is confined to the amendment of the law regarding agricultural tenancies, it deals with the holding of land for building purposes only where the holding of such land is in some sense ancillary to an agricultural tenancy, as, *e. g.*, where a *raiyat* has built himself a house in a village with a view to living near his agricultural holding.[2] **Limited scope of present Act.**

The case-law on the subject of *bastu* land before the passing of this Act was uncertain and, apparently, contradictory. This section is intended to make it clear. The principle of the section is, that, where *bastu* land is held by a *raiyat* with, and as part of, his arable holding, the ordinary provisions of the Act will apply; but, where *bastu* land is held by a *raiyat* as a distinct holding apart from the arable land held by him, the incidents of the *bastu* land are to be regulated by local custom, and, subject to local custom, by the provisions of the Act.[3] Whether a *raiyat* holds his *bastu* land as part of his holding as a *raiyat* or otherwise is a question of fact to be decided by **Object and principle of section 182.**

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[1] Rent Commission's Report, Appendix, p. 401.

[2] Para. 70 of Statement of Objects and Reasons of Bill as introduced—*see* Selections, p. 197.

[3] Selections, p. 223, para. 23.

the Court according to the circumstances in each case. Homestead lands are, according to local custom, in some parts of the country, held by *raiyats* rent-free, that is to say, rent is assessed only on the arable land, the homestead land being included in the *raiyat's* holding without being assessed to rent; and, in some parts, where an arable holding is surrendered with the landlord's consent, an occupancy-right survives by custom in the *bastu* land. The effect of the law, as it now stands, is, that, when a *raiyat* holds *bastu* land as an integral part of a *raiyati* holding at fixed rates, or as part of an occupancy or non-occupancy holding, as the case may be, he has the same rights in *bastu* land as in the rest of his holding; but, if he holds the *bastu* land separate and distinct from his arable land, his rights in the *bastu* land are regulated by local custom, and, subject to local custom, by the provisions of this Act.[1] A deposit of rent of homestead land may be made under section 61 of this Act (page 298, *ante*),[2] and this section applies whether the homestead land and the *raiyati* holdings are held under the same or different landlords.

An *obiter dictum* in one case,[3] that "the Bengal Tenancy Act has no application to homestead lands, whether situated in towns or outside towns," seems to have been delivered without considering the provisions of this section.

[*See* page 124, *ante* (section 19), as regards acquisition of occupancy-rights in homestead lands.]

Cases to which section 182 does not apply.

This Act does not apply to tenants of homestead lands who are not *raiyats*, such as the *chandina* tenants of Orissa, whose relations with their landlords are regulated by the Contract Act, and by case-law. Nor, apparently, does section 182 apply to "tenure-holders" whose rights and obligations

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[1] Paras 59 to 62 of Bengal Government's Report of 1884 on the Tenancy Bill—*see* Selections, pp. 358 to 360.

[2] *Pratap Chandra Dass* v. *Biseswar Paramanik* [1905], 9 C. W. N. 416. *See* also foot-note (1) on p. 760, *infra*.

[3] *Hasan Ali* v. *Gobinda Lal* [1905], 9 C. W. N. 141.

are regulated by Chapter III. of this Act and the case-law relating to tenures. The section does not, of course, apply to land which is leased, not for purposes of cultivation, or for purposes ancillary thereto, but for establishing a coal depôt, since such a lease does not come within the purview of this Act.[1]

Rulings as to when homestead land is, and when it is not, held as part of a raiyat's holding.

Where a *raiyat* was a settled *raiyat* of a village, and took a plot of homestead land in the village, but distinct and separate from his arable holding, and bound himself to give it up on the expiration of a certain period, it was *held*[2] that he had an occupancy-right in the homestead land, since there was no local custom or usage to the contrary, and the *raiyat*, being a settled *raiyat*, acquired occupancy-rights, under section 21 (*ante*, page 137), in all the land held by him as a *raiyat* in the village. In the case referred to, the *raiyat* clearly held the homestead "otherwise than as part of his (arable) holding," and the incidents of the homestead land were held to be regulated by the provisions of this Act applicable to settled *raiyats*, there being no local custom or usage to the contrary.

In another case,[3] the defendant had a *raiyati* holding and some homestead land in a village. He sold both to a certain person, who sold only the *bastu* land and the house on it to the plaintiff. The plaintiff was dispossessed by the landlord, and sued to recover possession. It was *held* that, as the plaintiff did not hold the homestead land as part of his *jote*, and the agricultural land of the original tenant had not been sold to him, he was not a *raiyat* in respect of the homestead land; and that, as he did not hold the land as a *raiyat*, the provisions of this Act did not apply.

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[1] *Raniganj Coal Association, Limited*, v *Jaboonath Ghose* [1892], I. L. R., 19 Cal. 489.

[2] S. A. No. 1072 of 1892 decided in 1893.

[3] *Abdul* v. *Kutban* [1897], 1 C. W. N. clxxi.

It is not required by this section (182) that a tenant in occupation of homestead land should be a *raiyat* in the village in which the homestead land is situated, nor is it necessary for him to be the tenant under the same landlord as the landlord of the homestead land.[1]

The sections that deal with ejectment from agricultural land in general apply also to ejectment from homestead lands (*see* sections 10, 18, 25, 44, 49, 89, 155, 156, 157). *See* also section 76 (*2*) (*f*) and the notes thereon.

When the lands included in the holding of a *raiyat* consisted partly of agricultural and partly of homestead lands, and the portion which could be used as homestead was let out for use as homestead, *held*[2] that the under-tenant was an under-*raiyat* within the Bengal Tenancy Act, and the Transfer of Property Act had no application: that, in order to maintain a suit in ejectment, a notice under section 49, sub-section (*6*), of the Bengal Tenancy Act, was necessary, and it was to be served in accordance with the rules framed under the Act.

On the vexed question of leasing land for building purposes, and the presumptions that may be drawn from the acts of the parties in relation thereto, *see* the cases noted below.[3] The Bengal Tenancy Act does not apply to such lands, generally speaking.

Saving of custom.

183. Nothing in this Act shall affect any custom, usage, or customary right not inconsistent with, or not, expressly or by necessary implication, modified or abolished by, its provisions.

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[1] *Kripa Nath* v. *Shekh Anu* [1906], 10 C. W. N. 944: this does not follow the view expressed in *Kuldip Sing* v. *Chathur Sing* [1898], 2 C. W. N. cccii.

[2] *Baboo Ram Roy* v. *Mahendra Nath Samanta* [1904], 8 C. W. N. 454 [*see* p. 244 (note 2), *ante*].

[3] *Ismail Khan* v. *Jaigun Bibi* [1900], I. L. R., 27 Cal. 570; *Promada Nath Roy* v. *Srigobind Chowdhry* [1905], I. L. R., 32 Cal. 648; *Naba Kumari Debi* v. *Behari Lal Sen* [1907], I. L. R., 34 Cal. 902 (P. C.) [from p. 904 of this Report, it seems that the Bengal Tenancy Act did not apply to the lands in question, but that point was not taken at all before their Lordships of the Privy Council].

Illustrations:

(1.) A usage under which a *raiyat* is entitled to sell his holding without the consent of the landlord is not inconsistent with, and is not, expressly or by necessary implication, modified or abolished by, the provisions of this Act: That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2.) The custom or usage, that an under-*raiyat* should, under certain circumstances, acquire a right of occupancy, is not inconsistent with, and is not, expressly or by necessary implication, modified or abolished by, the provisions of this Act: That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

Principle.

Certain customary rights have been, expressly or by necessary implication, modified or abolished by the Act; others are inconsistent with it. The custom relating to *abwabs*, the payment of interest on arrears of rent, of excessive rates, &c., are, in the case of *raiyats* at least, expressly abolished.

Custom not inconsistent with the provisions of the Act.

But, where a custom or usage, or a customary right, is not inconsistent with the provisions of the Act, and is not modified or abolished, the Legislature declares that such custom or usage, or customary right, will not be affected by the Act. Many local customs are well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice.[1] The Act does not interfere, nor was it intended that it should interfere, with such customs, excepting such as are expressly rescinded by it, or are clearly inconsistent with its provisions.[2]

Meaning of the word "custom"

The word "custom," when intended to imply a rule which, from long usage, has acquired the force of law in a particular community, locality, or family, is required to be ancient, certain, and reasonable.[3] It must also be uniform, uninterrupted, and con-

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[1] Rent Commission's Report, para. 12.

[2] *Neelkristo Deb Burmono* v. *Beer Chunder Thakoor* [1869], 12 Moore's I. A. 523 (P.C.), p. 542: s.c., 12 W. R. (P. C.) 21.

[3] *Hurpurshad* v. *Sheo Dyal* [1876], L. R., 3 I. A. 285: s.c., 26 W. R. 55 (P. C.). *See* also *Ramalakhshmi Ammal* v. *Sivananantha* [1872], 12 B. L. R. 396: s.c., 17 W. R. 553; *Doe d. Juggomohun Roy* v. *Neemoo Dossee* [1831], Montriou's Cases of Hindu Law 594; *Lutchmeeput Singh* v. *Sadaulla Nushyo* [1882], I. L. R., 9 Cal. 698; *see* also *Lachman Rai* v. *Akbar Khan* [1877], I. L. R., 1 All. 440.

stant;[1] peaceable and acquiesced in; and not against public policy or immoral.[2] But the word "custom" in the present Act, as in section 13 of the Evidence Act (I. of 1872), is not limited to ancient customs; it includes all customs and usages. The word, in fact, is used in this and other sections of the Bengal Tenancy Act, as in the Evidence Act, in its widest sense, and comprehends all customs, ancient or otherwise, and all usages.[3] Even in England, it has been *held*[4] that an agricultural custom need not have existed from "time immemorial." In the case just referred to, the local custom had grown up within the preceding 30 or 40 years.

Section 13, Evidence Act.

Section 13 of the Evidence Act (I. of 1872) declares that,—

Where the question is as to the existence of any right or custom, the following facts are relevant—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(*b*) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

What is relevant to an inquiry as to the existence of a custom.

When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant under section 48 of the Evidence Act (I. of 1872). Accordingly, every act of enjoyment or possession is a fact relevant to the inquiry. For "the right claimed is constituted by an indefinite number of acts of user exercised *animo domini*."[5] The right mentioned in section 13 of

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[1] *Lala* v. *Hira Singh* [1878], I. L. R., 2 All. 51.

[2] *Ghasiti* v. *Umraojan* [1893], I. L. R., 21 Cal 149.

[3] *Dalgleish* v. *Gusuffer Hossain* [1896], I. L. R., 23 Cal. 427; *Sariatullah Sarkar* v. *Prannath Nandi* [1898] I. L. R., 26 Cal. 184.

[4] *Tucker* v. *Linger* [1883], 8 App Cases 508.

[5] Ameer Ali and Woodroffe's "Evidence Act," p. 90, where the subject will be found fully treated.

the Evidence Act may be either *private*,[1] general,[2] or public as appertaining to all the inhabitants of a particular locality. Apparently, in section 183 of the present Act, the words "custom, usage, or customary right" are used in the same comprehensive sense.

Difference between custom and usage.

The difference between "custom" and "usage" has been pointed out by the Judicial Committee of the Privy Council, who said that, to support a usage,—

> There needs not either the antiquity, the uniformity, or the notoriety of custom which, in respect of all these, becomes a local law. The usage may be still in course of growth; it may require evidence for its support in each case; but, in the result, it is enough if it appear to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract.[3]

In the case just referred to, their Lordships were dealing with the question of "mercantile usage." But their remarks, as to the difference between "custom" and "usage," are of general application, and have been relied upon in cases relating to transfers of occupancy-rights.

Usage on adjacent lands.

It may be that a usage may have gradually sprung up all round an estate, and yet never have been introduced on it or recognized on it; and therefore, in considering the evidence, it is of much importance that this circumstance should be taken into consideration in connection with the conduct of the landlord in regard to any such transfer as may have taken place without his consent.[4]

Proof of custom or local usage.

To prove custom or local usage under section 183, it is not necessary that the witnesses should say that it has been existing to their knowledge "ever since they came in mind of it," or that it should have existed from time immemorial. The word "usage," at any rate, would include what the people are now or

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[1] *Illustration* to s. 13, Evidence Act.
[2] *Illustration* to s. 48, Evidence Act.
[3] *Juggomohun Ghose* v. *Manickchund* [1859], 7 Moo. I. A. 263.
[4] *Palakdhari Rai* v. *Manners* [1895], I. L. R., 23 Cal. 179.

were recently in the habit of doing in a particular place. It may be that this particular habit is only of very recent origin, or it may be one which has existed for a long time. If it be one regularly and ordinarily practised by the inhabitants of the place where the tenure exists, there would be "usage" within the meaning of the section.[1]

Relevancy of a usage in other villages in same pargana.

If the tenures in other villages in the same *pargana* were held under the same conditions, and were in other respects like the village in respect of which the question is raised, the usage of transferability in such other villages would be relevant to the inquiry; and a judgment in which that question is decided would be admissible in evidence.[2]

It is not necessary that a long period of time should elapse for the growth of a local usage.

It is not necessary that a long period of time should elapse to establish the growth of a "usage" or "local usage." The usage of the transferability of occupancy-holdings may be established in a much less period of time than a custom. Nor, in order to be valid, need the usage of transferability have existed from before the passing of the Bengal Tenancy Act. It may be established by evidence of purchases or transfers, by persons other than the landlords, made with the knowledge, but without the consent, of the landlords, and to which no objection was made by them.[3] In order to establish an "usage" under sections 178 and 183, it is not necessary to require proof of its existence for any length of time; and statements made by persons who were in a position to know of the existence of a custom or usage in their locality are admissible in evidence under section 48 of the Evidence Act (I. of 1872).[4]

Examination of cases.

In one case,[5] the Calcutta High Court seems to have thought that, in dealing with the question of local usage relating to transferability, it was material to find whether such usage was in

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[1] *Palakdhari Rai* v. *Manners* [1895], I. L. R., 23 Cal. 179.
[2] *Dalgleish* v. *Gusuffer Hassain* [1896], I. L. R., 23 Cal. 427.
[3] *Dalgleish* v. *Gusuffer Hassain* [1898], 3 C. W. N. 21.
[4] *Sariatullah Sarkur* v. *Pran Nath Nandi* [1898], I. L. R., 26 Cal. 184.
[5] *Dino Nath Ghosh* v. *Nobin Chunder Ghosh* [1900], 6 C. W. N. 181.

Cases about usage—*contd.*

existence at the time of the creation of the tenure. It is submitted, however, that the validity of a usage does not depend upon the fact of its existence at the time of the creation of the holding or tenure. The tenure may have been created a long while ago, but the custom or usage may have grown up since. Nor is there anything in the law to prevent such growth. In the case referred to, it was also *held* that the finding of local usage must be definite in character.

In another case,[1] although the lower Courts had distinctly found the usage, the learned Judges considered that "the transfers could not by themselves establish the usage;" and that, in order to prove usage, it was necessary to adduce evidence of purchases or transfers to persons other than the landlords made with the knowledge, and without the consent, of the landlords, to which "no successful objection was made by the landlord." In holding this, the High Court enlarged the *dictum* in the earlier case.[2]

In another case,[3] it was *held* that the essence of a usage of transferability is, that transfers made to the knowledge, but without the consent, of the landlord, are valid, and must be recognized by him; also that, where the usage of transferability of occupancy-holdings is found to have been growing up in *pattis* other than that of the landlord, he can retard the growth of the usage in his *patti* by refusing to acknowledge the validity of transfers therein.

In another case,[4] the facts found were, that, in a certain locality, upon transfer of a non-transferable holding, the landlord does not recognize the transferee as tenant, but, all the same, he receives rent from the transferee, granting a receipt, in which the original holder's name is entered as tenant, and

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[1] *Ramhuri Singh* v. *Jubbar Ali Meah* [1902], 6 C. W. N. 861.

[2] *Dalgleish* v. *Gusuffer Hossein* [1898], 3 C. W. N. 21.

[3] *Jagun Proshad* v. *Posun Sahoo* [1904], 8 C. W. N. 172 (followed in *Piari Mohan Mukherji* v. *Jote Kumar Mukherji* [1906], 11 C. W. N. 83).

[4] *Radha Kishore Manikya* v. *Ananda Pria* [1904], 8 C. W. N. 235. Compare *Kurani* v. *Sarini Kant* [1908], 12 C. W. N. 589.

Cases about usage—*contd.*

in which the transferee's name is entered as a person through whom the payment is made; and that, when the transferee does not personally pay the rent, but sends it by an agent, the name of this agent is also entered as the person by whose hand the payment is made; also that, until the transferee pays the *nazar*, the original holder remains recorded in the landlord's books as tenant. It was *held* that, upon these facts, it might be found that a *raiyat* is entitled to sell his holding without reference to the landlord, provided only that the purchaser pays to the landlord a customary fee; also, that the finding, that tenants do transfer their rights of occupancy without the landlord's consent, does not, in itself, establish a usage in this respect so as to affect the right of the landlord to accept or refuse to consent to such transfer; also, that the finding, that payment of a *nazar* was requisite to validate such transfer, would imply that the landlord's consent was necessary; and, finally, that, the *nazar* not having been paid by the transferee in the particular case, the landlord was entitled to a decree for ejectment.

It does not appear to have been considered what would the effect be of a refusal by the landlord to accept a *nazar* if tendered by the transferee. Probably the landlord is not bound to accept a *nazar* in such a case. Compare section 73 (*ante*, page 342) and the case[1] cited on page 343, *ante* (foot-note 4).

Acquiescence by a landlord in the acts of his tenants (in this case, the appropriation of trees) leads to the growth of a custom or usage which binds the landlord and his successors by purchase in the same way as if the landlord had expressly granted that right to his tenants.[2] *See* notes on section 23 (page 156, *ante*).

A growing usage is not valid against a landlord. It must have come to maturity[3] to be effective.

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[1] *Ambica Persad* v. *Chowdhry Keshri Sahai* [1897], I. L. R., 24 Cal. 642.

[2] *Prodyat Kumar Tagore* v. *Rakhal Chandra Sarkar* [1910], 14 C. W. N. 487.

[3] *Rajendra Kisore* v. *Chandra Nath Dutt* [1908], 12 C. W. N. 878.

Transferability of occupancy-rights.

It has been *laid down*[1] that it is for the person alleging transferability of a *raiyati* holding to show that this custom exists. The doctrine of *caveat emptor* applies with the greatest force to persons who undertake to purchase *raiyati* holdings from tenants.

The question of the transferability of occupancy-rights as such, it being common ground that the *jote* (holding) was not transferable without the landlord's consent, was recently considered by the High Court,[2] and the general proposition was laid down that "a right of occupancy cannot be transferred." The transferee of the share of one of several joint owners of an occupancy-holding, on the death of his vendor, sued for joint possession of the holding. His claim was considered not maintainable on the ground that, the *jote* not being transferable, the purchaser had acquired no title by his purchase. The landlord was not a party to the case, and no question of estoppel arose.

The ruling in *Hari Dass Bairagi* v. *Udoy Chandra* (1908), 12 C. W. N. 1086, to the effect that such sales were voidable by the landlord only, and not void *per se*, was not followed, it being apparently accepted that the doctrine of *estoppel* was the *ratio decidendi* in that case.

From the report of the case,[2] it appears that much reliance was placed on Regulation VII. of 1799, and an extract from Harrington's Analysis of various cases prior to Act X. of 1859, and in particular on the case (P. C.), *Chandrabati* v. *Harrington*,[3] which is cited as authority for the proposition that an occupancy-right cannot be transferred. But a reference to that ruling (page 353) seems to show clearly that all that this *obiter dictum* meant was, that the person claiming a right of occupancy should have been all along in continuous occupation. This *obiter dictum* arose out of an alteration of the defendant's name made in

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[1] *Gobind Chandra Jana* v. *Srimanta Charan Jana* [1910], 14 C. W. N. ccxxxi.

[2] *Agarjan Bibi* v. *Panaulla* [1910], 14 C. W. N. 779.

[3] [1891], I. L. R., 18 Cal. 353.

Examination of cases.

the plaint before the case was heard. In any event, this case, though decided in 1891, was under Act X. of 1859, and not under Act VIII. of 1885, and the question as to the transferability or otherwise of occupancy-rights was neither in issue nor decided in that case.

The subsequent cases quoted in support of the general proposition *lay down*[1] that, in the absence of custom or local usage to the contrary, a *raiyati* holding, in which the *raiyat* has only a right of occupancy, is not saleable at the instance of the occupancy-*raiyat*, or of any other creditor of his other than his landlord when executing his decree for arrears of rent (section 65, page 305, *ante*).

In that case,[1] plaintiff had bought in a *raiyati* holding, in execution of his own money-decree. The landlord recognized him, some years later, as his tenant, and then plaintiff sued for *khas* possession against the former tenant. The suit was dismissed. It was also pointed out that, under Act X, of 1859, it was *held*[1] that the right of occupancy was a personal right, and could not be transferred by sale; but that section 73 of Act VIII. of 1885 recognizes that, by local custom or usage, occupancy-*raiyats* may sometimes transfer their *holdings* without the consent of the landlord; and that section 65 makes an occupancy-*holding* saleable at the instance of the landlord in executing a decree for arrears of rent.

Again, in another case,[3] it was *held* that an occupancy-holding, which is not transferable by custom, as also the interests of the tenant (judgment-debtor) therein, is not saleable in execution of a decree which was not under the Bengal Tenancy Act; and that the judgment-debtor could object to delivery of possession, even after the confirmation of the sale, on the ground

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[1] *Bhiram Ali* v. *Gopi Kanth* [1897], I. L. R., 24 Cal. 355.

[2] *Norendra Narain Roy* v. *Ishan Chandra Sen*, 13 B. L. R. 274: 22 W R. 22. (1874).

[3] *Durga Charan Mandal* v. *Kali Prosanno Sarkar* [1899], I. L. R., 26 Cal. 727.

that the holding could not be sold in satisfaction of such a decree. This view was followed in a subsequent similar case,[1] and it was *held* that, as the tenant, judgment-debtor, in such a case had no saleable interest, the purchaser acquired nothing by his purchase.

Examination of cases (*contd.*)

The necessary implication from all these rulings seems to be, that, by custom and usage, occupancy-rights may be transferred against the will of the landlord.

In another case[2] it was *held* that, "when occupancy-rights, transferable by custom, have been transferred, it is open to the transferees to sue under the Specific Relief Act for a declaration that they have acquired certain rights. *Semble*—That a notice under section 73 should first be served.

Such transfers are contemplated by the first *Illustration* to section 183. The general proposition, that "a right of occupancy is a personal right, and cannot be transferred," is clearly inconsistent with the wording of section 22, sub-section (*2*), which lays down what shall happen when an *occupancy-right* is *transferred* to certain persons. Again, section 26 specifically provides for the devolution of an *occupancy-right* when the *raiyat* dies intestate; and provides, furthermore, that no escheat to the Crown shall take place. In other places in the Act, the term "occupancy-holding" is used meaning, evidently, the holding of an *occupancy-raiyat*, or to which a right of occupancy is attached [*see* section 178 (*3*) (*d*) and section 183, Illustration(*1*)]. The force of this Illustration was considered at length by the High Court, and it was *held*[3] that the previous law (*i. e.*, Act X. of 1859 and Bengal Act VIII. of 1869) was so far modified by the Bengal Tenancy Act that the right of transfer of a holding with *occupancy-right* could be established by proof of the existence of *usage* under which such transfers were made without the landlord's consent.

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[1] *Sadagar Sircar* v. *Krishna Chandra Nath* [1899], I. L. R., 26 Cal. 937.
[2] *Ambica Persad* v. *Keshri Sahai* [1897], I. L. R., 26 Cal. 642.
[3] *Palakdhari Roy* v. *Manners* [1895], I. L. R., 23 Cal. 179.

Transferability of occupancy-rights.

Again, in Chapter XIV., sections 158B, 160 (*d*), 160 (*f*), 166, and 171, all contemplate the results of sales of occupancy-holdings. Section 65 provides that occupancy-holdings may be brought to sale for arrears of rent. If the right of occupancy does not pass to the purchaser at such sales, what does pass? Is it the "holding" alone as defined in section 3 (*9*), page 69, *ante*, or the right of a non-occupancy *raiyat*?[1]

And, if so, and the purchaser is a settled *raiyat* of the village (section 21, page 137, *ante*), would he not at once have occupancy-rights in that land?

Again, words were added to section 22 (*3*) by the latest Amending Acts to prevent an *ijaradar* from acquiring, *by purchase or otherwise*, an occupancy-right in lands in his possession in virtue of an *ijara* lease: A *decision*[2] of the High Court—that 'acquire' did not include 'purchase'—had made this amendment necessary for the protection of landlords.

It is submitted that the necessary conclusion from all these facts is, that the transfer of occupancy-rights is recognized by the Bengal Tenancy Act (though it was definitely settled that such transfers were not recognized under the previous law), provided there be a local custom or usage that sanctions such transfers.

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[1] *See* Ch. VI., s. 41, *et seq.*, p. 223, *ante*. *See* also *Ram Lal Sukul* v. *Bhela Ghasi* [1910], 14 C. W N. 614, which identifies the purchaser of a *jote* at an execution-sale with a non-occupancy *raiyat*, the occupancy-right not having passed.

[2] *Ramrup Mahton* v. *Manners*, 4 C. L. J. 209.

CHAPTER XVI.

LIMITATION.

Limitation, in suits, appeals, and applications, in Schedule III.

184. (*1*) The suits, appeals, and applications specified in Schedule III. annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed although limitation has not been pleaded.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal, or make any application, which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Principle.

The object of the Legislature in passing this Act being to facilitate the prompt settlements of disputes, it has prescribed certain special rules of limitation for certain suits, appeals, and applications, which are contained in Schedule III. to the Act.[1] Sub-section (*2*) expressly declares that nothing in section 184 shall revive the right to institute a suit or appeal, or to make an application, which was already affected by the bar of limitation before the commencement of the Act. Schedule III. prescribes one period of limitation for all suits for arrears of rent brought under the provisions of the Act, whether the rent is payable under a lease or not, and whether the lease is registered or not.[2] It is equally applicable to suits for arrears of rent of

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[1] *See* notes to Sch. III., *post*.

[2] *Mackenzie* v. *Haji Syed Mahomed Ali Khan* [1891], I. L. R, 19 Cal. 1. *See* also *Iswari Pershad Narain Sahi* v. *Crowdy* [1890], I. L. R, 17 Cal. 469.

patni taluqs.[1] But cases which do not come within the purview of the Schedule are governed, as to limitation, by Act IX. of 1908 [*see* section 185, sub-section (*2*), following].

Limitation as to a rent-suit by one of co-sharer landlords as assignee of the rest.

A suit for arrears of rent brought by one co-sharer landlord as assignee of the interests of all the other landlords is governed by article 2 of Schedule III. of this Act, and not by article 110 of the Second Schedule of the Limitation Act.[2]

Portions of the Indian Limitation Act not applicable to such suits, &c.

185. (*1*) Sections 7, 8, and 9* of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last-foregoing section.

* *Now* sections 6-9, Act IX, 1908

(*2*) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877,† shall apply to all suits, appeals, and applications mentioned in the last-foregoing section.

† Act XV. 1877—*now* Act IX. of 1908.

Principle.

This section, while declaring that certain sections of the Indian Limitation Act shall not apply to "the suits and applications" specified in Schedule III. (*cf.* section 184, *ante*), prescribes that, subject to the provisions of the present Chapter, the provisions of the said Act shall apply to all proceedings (suits, appeals, and applications) mentioned in section 184.

Effect of section 185.

Section 6 of the present Limitation Act (IX. of 1908) provides that, if a person entitled to sue or make an application is a minor or insane, or an idiot, he may sue or make an application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed by the law. At one time there seems to have been some conflict of opinion regarding the applicability of that section to rent-suits, although, in one case[3] arising under Bengal Act VIII. of 1869, it was

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[1] *Burna Moyi Dassee* v. *Burma Moyi Chowdhurani* [1895], I. L. R., 23 Cal. 191.

[2] *Soshi Kumar Mirbahar* v. *Sita Nath Banerjee* [1908]. I. L. R., 35 Cal. 744 (distinguishing *Mohendra Nath* v. *Kailash Chandra* [1900], 4 C. W. N. 605).

[3] *Girija Nath Roy* v. *Patani Bibee* [1889], I. L. R., 17 Cal. 263.

distinctly *held* that that section was not applicable to such suits. The Legislature has now removed all doubts by expressly excluding the operation of sections 6, 7, 8, and 9 of the Limitation Act with respect to suits coming under section 184 of the Bengal Tenancy Act. Act IX. of 1908.

The effect of section 185 is, that the disability of a person entitled to sue will not prevent limitation from running from the time at which the cause of action arises. This rule is founded on obvious expediency. The guardian of a minor or the committee of a lunatic can bring the action; and there is no reason for allowing a right, which ought to be established without delay, to be kept in abeyance until, it may be, the adversary has, by effluxion of time, lost much of his evidence.[1]

Section 7 of the Limitation Act provides that, when one of several persons jointly entitled to institute a suit, etc., is under any such disability, and a discharge can be given without his concurrence, time will run against them all; but, where no such discharge can be given, time will not run against any of them until one of them becomes capable of giving such discharge without the concurrence of the others. Section 8 exempts suits to enforce rights of pre-emption, and limits the extended period to three years from the cessation of the disability. Section 9, which declares that, when once time has begun to run, no subsequent disability or inability to sue stops it, is explicit.

Save and except the sections expressly excluded. the general provisions of the Limitation Act, as well as the rules laid down in Part III. of that Act for the computation of the period of limitation, are applicable to proceedings under the present Act.

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[1] *See* the remarks of Lord DENMAN, *C. J.*, in *Rhodes* v. *Smethurst* [1840], 6 M. & W., at p. 356.

Decisions under the old law.

Even under the old law, it was *held*[1] that the provisions of section 5 of the old Limitation Act (XV. of 1877) were applicable to suits under Bengal Act VIII. of 1869; the corresponding section 4 of Act IX. of 1908 extends time till the Courts re-open if the time expires on a closed day.

A Full Bench of the Calcutta High Court *held*[2] that the provisions of section 14 of the Limitation Act (*formerly*, No. XV. of 1877, *now* No. IX. of 1908) were not applicable to suits for arrears of rent under Act X. of 1859, but this ruling does not apply to proceedings under the present Act.

That section (14) excludes from the period allowed the time occupied in prosecuting with due diligence in a Civil Court (which is unable to entertain the case from a defect of jurisdiction or similar cause) another civil proceeding founded on the same cause of action.

Where a tenure was put up to sale, and the sale was afterwards set aside at the instance of the tenure-holder, and he received possession from the auction-purchaser, with mesne-profits for the period during which he was out of possession, in a suit for rent for that period, the tenure-holder contended that the claim was barred, and it was *held*[3] that he took back the tenure "subject to the obligation to pay the rent; and that the particular arrears of rent claimed in this action must be taken to have become due in the year in which the restoration to possession took place."[4]

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[1] *Behari Loll Mukerji* v. *Mungola Nath Mookerjee* [1879], I. L. R., 5 Cal. 110; *Golap Chand Nowluckha* v. *Krishto Chunder Dass Biswas* [1879], I. L. R., 5 Cal. 314; *Khoshe Lal Mahton* v. *Gunesh Dutt* [1881], I. L. R., 7 Cal. 690. Compare *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha* [1883], I. L. R., 10 Cal. 265; *Nagendro Nath Mullick* v. *Mathura Mohun Parhi* [1891], I. L. R., 18 Cal. 368.

[2] *Nagendra Nath Mullick* v. *Mathura Mohun Parhi* [1891], I. L. R., 18 Cal. 368.

[3] *Ranee Surno Moyee* v. *Shoshee Mookhee Burmenia* [1868], 12 Moo. I. A. 244: s. c., 11 W. R. (P. C.) 5: 2 B. L. R. (P. C.) 10 (distinguished in *Mahomed Yiaulla* v. *Sukhanissa Bibi* [1910], 14 C. W. N. 447). *See* also notes under Ch. XIV., pp. 672-83, *ante*.

[4] *See* also *Ishan Chandra Roy* v. *Khaja Assanulla* [1871], 8 B. L. R. 537-*note*: s. c., 16 W. R. 79; *Dindayal Paramanik* v. *Radha Kishori Debi* [1872], 8 B. L. R. 536: s. c., 17 W. R. 415; *Mohesh Chunder Chakladar* v. *Gungamonee Dossee* [1872], 18 W. R. 59; and *Dhunput Singh* v. *Saraswati Misrain* [1891], I. L. R., 19 Cal. 267.

If the *zamindar* himself has been in possession of the tenure during the period, and collected the rents, the amounts so collected would be deducted from the gross *jama*, and the balance paid without interest thereon.[1]

When limitation begins to run where there has been litigation.

It follows from these cases that, when there has been litigation between two persons, and, in the result, it has been found that they stand to each other in the relation of landlord and tenant, and stood in that relation while the litigation was proceeding, but, until their mutual rights were finally determined, the landlord was unable to sue the tenant for rent, the period of limitation for a suit for the rent in question should be computed from the termination of such litigation.[2] So, too, the fact, that a suit for enhancement of rent had been *sub-judice*, was *held*[3] to stay the operation of the law of limitation, and to allow of a suit for arrears of rent being brought more than three years after the due date.

The above principle, however, is applicable only where the circumstances are such as to entitle the plaintiff, upon strict equitable considerations, to recover the arrears. But it will not be applied in cases where, although the landlord has denied the continuance of the relation of landlord and tenant, and attempted to put an end to that relation, the tenant was, nevertheless, not dispossessed, and there was, in consequence, nothing to prevent the landlord from suing for, and recovering, his rent.[4] In the case last referred to, the Judicial Committee

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[1] *Dhunput Singh* v. *Saraswati Misrain* [1891], I. L. R., 19 Cal. 267.

[2] Rent Commission's Report, para. 162.

[3] *Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri* [1904], 8 C. W. N. 1.

[4] *Watson & Co.* v. *Dhonendra Chunder Mookerjee* [1877], I. L. R., 3 Cal. 6; *Hurro Proshad Roy* v. *Gopaul Dass Dutt* [1878], I. L. R., 3 Cal. 817; *Huro Pershad Roy* v. *Gopal Das Dutt* [1882], I. L. R., 9 Cal. 255: s c., 12 C. L R. 129; *Buroda Kant Roy* v. *Chunder Coomar Roy* [1875], 23 W. R. 230, on appeal to the P. C ; *Sheriff* v. *Dinanath Mookerjee* [1885], I. L. R., 12 Cal. 258; *Hurro Kumar Ghose* v. *Kali Krishna Thakur* [1889], I. L. R., 17 Cal. 251; *Burna Moyi Dassee* v. *Burna Moyi Chowdhurani* [1895], I. L. R., 23 Cal. 191; *Mahomed Majid* v. *Mahomed Ashan* [1895], I. L. R., 23 Cal. 205.

pointed out the scope of the principle, upon which the earlier decision[1] rested, as follows:—

The effect of that case may be very shortly stated. The *zamindar* brought a certain *patni taluq* to sale, and sold it to a purchaser who was put in possession of it, and, out of the purchase-money, the arrears of rent were paid. Subsequently, this sale was set aside for irregularity; the *zamindar* had to refund the purchase-money received by her, and the *patnidar*, who succeeded in setting it aside, obtained also the mesne-profits for the time during which he was ousted. Under those circumstances, this Committee, whose judgment was delivered by Sir JAMES COLVILE, observe: "It is clear that, until the sale had been finally set aside, she"—that is, the plaintiff—"was in the position of a person whose claim had been satisfied, and that her suit might have been successfully met by a plea to that effect." In other words, the effect of the judgment of this Board is, that, under the peculiar circumstances, the *patnidar* having recovered possession together with mesne-profits, it was equitable that he should pay the amount of rent which was in arrear; but that amount of rent did not accrue until the sale of the *patni* had been set aside, and, therefore, until that time, the Statute could not run. This examination of that case shows it altogether to differ from the present. Here there was no period of time in which the rent could not have been recovered. There was no period of time in which, therefore, the Statute might not have run.

Suit for compensation for use and occupation of land.

A suit for compensation for use and occupation of land, brought by one set of joint tenants against another, is not a suit for rent under the Bengal Tenancy Act.[2] The provisions of article 2 (*a*) of Schedule III., *post*, are identical in scope (though not in language) with those of section 31[3] of Bengal Act VIII. of 1869. Under section 31 of the old Act, it was *held* that, even where the suit is for rent accruing due upon additional land brought into cultivation under the terms of a

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[1] *Ranee Surno Moyee* v. *Shoshee Mookhee Burmonia* [1868], *supra* (*see* f.-n. 3, p. 774).

[2] *Watson & Co.* v. *Ram Chand Dutt* [1896], I. L. R., 23 Cal. 799.

[3] S. 31 of Bengal Act VIII. of 1869 ran as follows: "Whenever a deposit on account of rent shall have been made under the provisions of this Act, or of Act VI. of 1862, passed by the Lieutenant Governor of Bengal in Council, no suit shall be brought against the person making the deposit or his representatives on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted within six months from the date of the service of the notice in s. 5 of the said Act VI. of 1862, or in s. 47 of this Act, mentioned."

lease, it would be barred if instituted more than six months after deposit by the tenant of the rent paid by him in previous years for the *taluq*.

The special limitation prescribed by section 31 was *held*[1] not to apply to suits where there was a dispute regarding the title to the holding or tenure.

Suits in case of dispute as to title.

Nor did that section bar suits brought for rent that accrued subsequent to the date of deposit, the Act plainly indicating that, in order to create a bar, the deposit must be of rent which accrued due prior to that date.[2]

Suits for rent accruing subsequent to deposit.

See, further, section 167 and notes thereon at page 694, *ante*. If an application under that section is made in the first instance against the wrong person, the Collector has no authority to extend the time.[3] A minor is not entitled to any extension of time making applications under that section.[4]

No extension of time for applications under section 167 in certain cases.

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[1] *Ramdin Singh* v. *Chundee Pershad Singh* [1874], 21 W. R. 278.
[2] *Surja Kant Acharya* v. *Hemanta Kumari* [1892], I. L. R., 20 Cal. (P. C.) 498; *Bejoy Gobind Singh* v. *Karoo Singh* [1872], 18 W. R. 531.
[3] *Nitya Gopal Hasra* v. *Ghulam Rasul* [1901], I. L. R., 28 Cal. 180.
[4] *Akhai Kumar Sur* v. *Bijai Chand* [1902], I. L R., 29 Cal. 813.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,— **Penalties for illegal interference with produce.**

(*a*) distrains, or attempts to distrain, the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or,

(*c*) except with the authority or consent of the tenant, prevents, or attempts to prevent, the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. **Act XLV., 1860.**

(*2*) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (*1*), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code. **Ditto.**

The sections of the Indian Penal Code which deal with criminal trespass are sections 441, *et seq.* Those which deal with abetment are sections 107, *et seq.* The provisions of the present Act relating to distraint are contained in Chapter XII. *ante*, page 541.

Bengal Act I., 1907; E B. Assam Act I, 1098. Damages for denial of landlord's title.

[*Damages for Denial of Landlord's Title.*

186A. (*1*) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up, without reasonable or probable cause, title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(*2*) The amount of damages decreed under sub-section (*1*), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 158B, in any of the modes in which a decree for rent may be executed.]

References.

See notes on sections 25 (page 164) and 89 (page 402), *ante*.

Object of the section.

This new section is designed to prevent or discourage *mala-fide* denials by tenants of their landlords' title, which denials were alleged to be a frequent and fruitful source of unnecessary litigation.

Bar to plea of tenancy in ejectment-suits following a denial of title in the landlord.

Where the defendant, in a suit for rent by the plaintiff, his landlord, had denied his title, and claimed to hold under a third

party, it was *held*[1] that, in a suit by the landlord for ejectment of the defendant as a trespasser, the defendant was debarred from pleading his tenancy, and claiming to hold possession on that ground.

See also sections 25 (page 164), 44 (page 228), 89 (page 402), 157 (page 656), and 178 (*1*) (*c*) (page 729), *ante*.

Agents and Representatives of Landlords.

Power for landlord to act through agent.

187. (*1*) Any appearance, application, or act in, before, or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of, or receive, the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

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[1] *Shekh Madar* v. *Rajani Kanto Roy* [1910], 14 C. W. N. 339 (following *Nilmadhab Bose* v. *Ananta Ram* [1898], 2 C. W. N. 755; *Fais Dhali* v. *Aftabudin* [1902], 6 C. W. N. 575; *Ramgati* v *Pranhari* [1905], 3 C. L. J. 201; *Khater Mistri* v. *Sadrudin Khan* [1907], I. L. R., 34 Cal. 922; and distinguishing *Srimati Mallika Dasi* v. *Makham Lal Chowdhry* [1905], 9 C. W. N. 928, in which the plaintiff was only one of several co-sharers, and defendant resisted his claim to rent on that ground).

What should be "written authority" in sub section (1).

The written authority in sub-section (1) should be a duly-stamped power-of-attorney.

As to the powers of agents, *see* the notes to section 145 page 599, *ante*, and to section 56, page 286, *ante*.

Joint-landlords to act collectively, or by common agent.

188. Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them:

References.

Reference should be made to sections 148A (page 619, *ante*), 158B (page 671); the new proviso to section 169 (page 702), and section 188A, *post*, which have materially altered what was previously understood to be the law as to co-sharer landlords.

Object of sections 188 and 93 to 98.

The object of this section and sections 93 to 98 (*ante* pages 413 to 422), relating to the appointment of common managers, was explained by the Bengal Rent Commission thus:—

A serious source of difficulty in the relations between landlords and tenants arises out of the system of co-parcenary, which is customary amongst Hindus, and is not uncommonly imitated by Muhammadans. When . . . . the co-sharers are disunited, and dissension prevails among them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly on their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant who would comply with all their demands would find that he had to pay a considerable amount more than his actual rent. . . . Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *Amins* prepare *chittas*, the entries in which are regulated by the gratifications which the *raiyats* are able or willing to give them.[1]

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[1] Rent Commission's Report, para. 134.

Sections 188 and 93 to 98 were intended to apply a remedy to this state of things.

Possession and management of a property by one co-owner without any assertion of hostile title does not constitute adverse possession against other co-owners.[1]

Powers of co-sharer landlords.

Under the old rent-law, a co-sharer landlord might collect his share of the rent separately, and sue for it separately, when it had been arranged between the co-sharers and the tenants that the latter should pay each co-sharer his proportionate share of the entire rent. Such an arrangement might be evidenced either by direct proof, or by usage from which its existence might be presumed. In the absence of such an arrangement, a separate suit by a co-sharer for rent could not be maintained. Such an arrangement is not necessarily perpetual, and may be departed from.[2]

But, without such an arrangement, a co-sharer landlord could sue for his separate share of the rent if he made all his co-sharers co-defendants, or he could ask the Court to make them co-defendants.[3] But he could only obtain a simple money-decree prior to the inclusion of sections 148A, 158B, and 188A (*post*) in this Act.

When a tenant had been accustomed to pay his rent jointly, and was sued by one of the co-sharers, the other co-sharer landlords being made defendants, and the tenant pleaded that he had paid the rent to the co-defendants, who admitted the receipt of it, the suit was dismissed, it being *held*[4] that the remedy of the co-sharer landlord was against the other co-sharers, and not against the tenant.

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[1] *Ujalli Bibi* v. *Umakanta Karmokar* [1905], 9 C. W. N. 32.

[2] *Akhoy Kumar Mitra* v. *Gopal Kamini Debi* [1906], 10 C. W. N. 952. *See* also *Shyama Charan Bhattacharjya* v. *Akhoy Kumar Mitter* [1905], 10 C. W. N. 787.

[3] *Obhoy Govind Chowdhry* v. *Hury Churn Chowdhry* [1882], I. L. R., 8 Cal. 277.

[4] *Ahamudeen* v. *Grish Chunder Shamunt* [1878], I. L. R., 4 Cal. 350.

When a landlord sues for the entire rent of a holding, and it is found that he is entitled only to a share of it, the suit must be dismissed unless his co-sharer landlords are made parties to it, or an arrangement is *proved* between the landlords and the tenant that the latter should pay to each landlord his proportionate share of the rent.[1]

A co-sharer could not sue for enhancement of his share of the rent,[2] and could not eject a tenant admitted to possession by all the co-sharers;[3] but apparently such a suit could proceed at the instance of one co-sharer if the tenant had been let into possession without his assent;[4] nor could a co-sharer survey and measure the lands of his estate; but it was *held*,[5] for the reasons that applied to a suit for recovery of arrears of rent, that he could apply for a measurement if he made the other co-sharers parties to the proceedings.

What a co-sharer landlord can, and what he cannot, do under section 188 of the present Act :—

Recovery of arrears of rent:

It has been *held* by the High Court that section 188 makes no change in the previous law regarding the recovery of rent by a co-sharer landlord. In one of the earliest cases[6] decided by the High Court, it was said "we can find nothing in the (Bengal Tenancy) Act which authorizes a landlord to bring a suit for recovery of arrears of rent. The terms of the section (188) should be strictly construed, for we cannot assume that the Legislature intended to alter the practice of our Courts as established by numerous decisions." It was therefore *held* that, as there was nothing in the Act which *authorized* a landlord to bring a suit against a tenant for arrears of rent, one of several joint landlords is still competent to sue for the entire rent, making his co-sharers parties to the suit.

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[1] *Nepal Chandra Ghose* v. *Mohendra Nath* [1904], I. L. R., 31 Cal. 707 (following *Guni Mahomed* v. *Moran* [1878], I. L. R., 4 Cal 96).

[2] *Guni Mahomed* v. *Moran* [1878], I. L. R., 4 Cal. 96.

[3] *Ahamudeen* v. *Grish Chunder Shamunt* [1878], I. L. R., 4 Cal. 350; *Radha Proshad Wasti* v. *Esuf* [1881], I. L. R., 7 Cal. 414, distinguished in *Ghulam Mohiudin* v. *Khairan*—*see* footnote 4.

[4] *Ghulam Mohiudin* v. *Khairan* [1904], I. L. R., 31 Cal. 786.

[5] *Abdool Hossein* v. *Lall Chand Mahton* [1883], I. L. R., 10 Cal. 36.

[6] *Prem Chand Nusker* v. *Mokshoda Debi* [1887], I. L. R. 14 Cal. 201. *See* also *Jugobundhu Pattuck* v. *Jadu Ghose Alkushi* [1887], I. L. R., 15. Cal. 47.

The question as to the right of one co-sharer landlord to sue for the whole rent due, making defendants his co-sharers who refuse to join him as plaintiffs, was recently discussed by the Privy Council. Their Lordships *held*[1] that, under these circumstances, one co-sharer can sue for the whole rent of the tenure, and that he is authorized to do this, not by reason of any provision of the Tenancy Act, but by the general principles of legal procedure:

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

It has long been *held* in Bengal that agreement, either express or implied, may establish the right to sue separately for the shares of rent receivable by the separate shareholders.

It has been equally clearly laid down that such an arrangement, express or implied, merely affects the right to sue separately for rent, and in no other respect modifies the terms of the holding..... The right to bring the tenure to sale for arrears of rent remains intact; and also the right of one sharer to sue, making his co-sharers defendants when they will not join as plaintiffs.

It was suggested that section 188 precludes a suit under the Act for the aggregate rent of the tenure unless all those entitled to share in the rent join as plaintiffs. This argument was not considered convincing, as—

The filing of a suit is not a thing which the landlord is under the Act *required* or *authorized* to do. It is an application to the Court for relief against an alleged grievance which the plaintiff is entitled to submit, not by reason of any provision of the Tenancy Act, but under the general law.

This observation of their Lordships was apparently in the minds of two Judges of the Calcutta High Court when they laid it down in two recent cases[2] that

A suit for rent is not a proceeding under the Bengal Tenancy Act.

It seems impossible to understand the above observation of their Lordships on the interpretation of section 188 of this Act as

Suits for rent not 'proceedings' under the Tenancy Act.

[1] *Premada Nath Roy* v. *Ramani Kanta Roy* [1907], I. L. R., 35 Cal. 331.

[2] *Mulluk Chand* v. *Satis Chandra* [1910], 14 C. W. N. 334; and *Jahander Box* v. *Ram Lall* [1910], 14 C. W. N. 470.

Suits for rent not 'proceedings' under the Tenancy Act (*contd.*)—

authorizing this dictum of the Honourable Judges. It is submitted that, when a landlord sues his tenants for rent, and observes the special procedure provided by Chapter XIII. of this Act, the suit so framed and tried must be a proceeding under this Act; and that various presumptions of this Act [*e.g.*, that in section 20 (*7*), section 50, section 103B (*3*), section 120 (*2*)] are applicable in such suits.[1] Of course a landlord is not bound to frame and institute his suit as provided by this Act; but, if he does not, he cannot claim the benefit of the special remedies and reliefs provided by section 65 or Chapter XII., or Chapter XIV., etc.

Where a tenant had taken a lease from one of several joint landlords in respect of his own share of the holding, it was *held*[2] that the landlord was entitled to sue for rent without joining his co-sharers, since, if a tenant agrees to allow one of several co-sharers to deal with him as if he were his own tenant, without regard to the interests of other co-sharers, the effect is to create a separate tenancy under such co-sharer, and section 188 does not apply.[3]

Recovery of damages:

It has also been *held*[4] that a co-sharer landlord can sue individually for damages for recovery of the value of trees cut down by a tenant, where the other co-sharers are made co-defendants, apparently on the principle that such a suit is authorized, not by the Bengal Tenancy Act, but by the ordinary law of contract.

In the same case[4] it was recognized that the High Court may revise, under section 115* of the Civil Procedure Code, orders under this section passed illegally, or with material irregularity.

* *Formerly* 622.

Recovery of arrears of rent:

As a decree obtained by one of several co-sharers for rent was formerly not a decree obtained under the Bengal Tenancy Act, the proceedings in execution thereof could only be in accor-

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[1] *See* also the discussion of that dictum in 14 C. W. N., No. 19, cxxvi.
[2] *Behary Churn Sen* v. *Bhut Nath Pramanik* [1891], 3 C. W. N. 214.
[3] *Panchanan Banerji* v. *Raj Kumar Guha* [1892], I. L. R., 19 Cal. 61.
[4] *Hrisikes Singha* v. *Sadhu Charan Lohar* [1897], 2 C. W. N. 80.

dance with the Code of Civil Procedure, and therefore an occupancy-holding, which was not saleable by custom or usage, could not be sold in execution of such a decree.[1]

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

This no longer holds good, in view of the addition of sections 148A, 158B, and 188A in 1907, 1908.

It has been *held*[2] that a co-sharer landlord, who has purchased an occupancy-holding in execution of a decree of his own, cannot resist a mortgagee's suit to enforce his mortgage on the ground that the holding was non-transferable, he himself being a purchaser without the landlord's consent, taking the word "landlord" in its proper signification of the whole body of landlords.

Recovery of joint possession of an abandoned non-transferable holding:

In a suit by a co-sharer landlord to recover joint possession of an occupancy-holding in respect of his share on the grounds that the defendant co-sharer, who had bought the holding, acquired no title to it by purchase, as it was not transferable by custom; and that there was an abandonment of the holding by the former tenant, the defence set up was, that the plaintiff was not entitled to sue for joint possession, and that he could not get any relief except by bringing a suit for partition, inasmuch as the plaintiff and defendants were joint landlords: and it was *held*[3] that the plaintiff was entitled to the relief claimed, and that the suit for joint possession was maintainable without partition.

Recovery of arrears of rent after partition:

Where a partition of an estate was made between two joint landlords, and each of them brought a separate suit against a tenant for arrears of rent, it was *held*[4] that the suit was maintainable, and that apportionment of the sum due might take place, all the parties interested having been made parties; and that section 188 did not bar the suit, as the section does not prescribe that the relation of joint landlord is to endure for ever.

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[1] *Durga Churn Mandal* v. *Kali Prosonna Sircar* [1899], 3 C. W. N. 586.

[2] *Horo Chandra* v. *Umesh Chandra* [1910], 14 C. W. N. 71. *See* also s. 157 (*notes*), p. 656, *ante*.

[3] *Dilbar Sardar* v. *Hossein Ali Bepari* [1899], I. L. R., 26 Cal. 553.

[4] *Raj Narain Mitter* v. *Bhadasi Bag* [1899], 4 C. W. N. 494.

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

Recovery of rent for, or assessment of, accreted land:

Where the defendants in a suit had a holding under the plaintiffs and their co-sharers, and, subsequent to the creation of the original holding, took possession of certain lands by gradual encroachment, and the plaintiff co-sharer landlords brought a suit for recovery of their share of the encroached lands, or for assessment of rent, and made the other co-sharers parties, it was *held*[1] that the accreted land was altogether a new holding; that the rent that would be assessed on it would be a new rent in respect of the new holding; and that, as a suit for assessment of rent is not an act authorized by the Bengal Tenancy Act, but is inseparable from the position of proprietors, section 188 would not apply. The accreted land was not excess area in this case, but a new holding altogether; but, if the landlord sued for rent, not only for the additional land found in possession of the tenants over and above the land of their holding, but in respect also of the entire quantity of land found in their possession including the lands of their old holdings, section 188 would apply.

Enhancement of rent, and recovery of rent, for additional area:

A co-sharer landlord cannot maintain a separate suit for enhancement of rent even though there be an agreement made by the tenant to pay his share of rent separately;[2] nor can a co-sharer sue separately for additional rent under section 52 (*ante* page 265),[3] since enhancement and additions to the rent for excess area are things *authorized* only by this Act, and nothing else. But, where a co-sharer landlord gave a *patta* to a tenant, the terms of which were that, when the whole of the lands were brought under cultivation, the landlords would be at liberty to measure the lands of the tenure, and, if the land were found greater in quantity than 150 *bighas*, the tenant would pay rent at 10 annas per *bigha*, and a co-sharer landlord sued alone, making the other co-sharers defendants, it was *held*[4] that the suit was main-

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[1] *Khondkar Abdul* v. *Mohini Kant Saha* [1900], 4 C. W. N. 508.

[2] *Baidya Nath De Sarkar* v. *Sheikh Jhin* [1897], 2 C. W. N. 44 (following *Guni Mahomed* v. *Moran* [1878] I. L. R., 4 Cal. 96).

[3] *Gopal Chunder Das* v. *Umesh Narain Chowdhry* [1890], I. L. R., 17 Cal. 695.

[4] *Dintarini Dasi* v. *Broughton* [1896], 3 C. W. N. 215.

tainable at the instance of the plaintiff alone, making the other co-sharers co-defendants, since the suit was not one for alteration of the rent under section 52, or for an enhancement of rent, but was a suit for arrears of rent due under the terms of the contract. *See* also the case[1] quoted on page 179, *ante* (under section 29).

What a co sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

Where a co-sharer landlord brought a suit against a *raiyat* for arrears of rent, and for additional rent on the basis of a *kabuliyat* executed by the *raiyat*, in which the right of the plaintiff to certain rent was admitted, and his right to additional rent for lands found on measurement to be in excess of the area stated was also admitted, and the right of the plaintiff and the liability of the defendant were distinctly set out as the basis of the agreement between the parties, without any reference to the right of any other co-sharer landlord, it was *held*[2] that the suit was maintainable although the plaintiff's co-sharer was not made a party.

Recovery of rent and of additional rent for excess area

It was also *held*[1] in the case just referred to that section 188 would not affect the co-sharer landlord's right under the *kabuliyat* unless the right to make such an agreement were otherwise forbidden by the Act, and that section 178, which is the only section dealing with the full action of landlords and tenants in the matter of contracts, does not refer to such a matter.

This principle was followed in subsequent cases. It was *laid down*[3] that—

Section 188 has no application when there is a separate contract in favour of one set of landlords. If one set of landlords obtained a separate *kabuliyat* entering into a separate contract for rent with the tenant, such landlord ceases to be a joint landlord with other co-proprietors of the land. He becomes a joint owner, and not a joint landlord. That is the distinction which should be kept in mind in deciding cases like the present which would otherwise be covered by section 188 . . . . .

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[1] *Ram Chunder Chukrabati* v. *Giridhar Dutt* [1891]. I. L. R., 19 Cal. 755.

[2] *Gobind Chandra Pal* v. *Hamidulla Bhuian* [1903], 7 C. W. N. 670 (referred to in *Jogneshh Prokash Ganguli* v. *Manirud li* [1908]. I. L. R., 35 Cal. 417).

[3] *Jogneshh Prakash Ganguli* v. *Maniruddi* [1908], I. L. R., 35 Cal. 417 (referring to *Gobind Chandra Pal* v. *Hamidulla Bhuian* [1903], 7 C. W. N. 670 and *Malangini Dasi* v. *Ramdass Mullick* [1902], 7 C. W. N. 93).

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

Ejectment of tenant:

A co-sharer landlord cannot sue for ejectment of a tenure-holder, *raiyat*, or under-*raiyat* since the ejection of tenure-holders is a thing authorized by section 10 of this Act, and by no other Act; that of a *raiyat* at fixed rates by section 18; that of an occupancy-*raiyat* by section 25; that of a non-occupancy *raiyat* by section 46; and that of an under-*raiyat* by section 49.

It has been *held*, however, by the High Court in one case,[1] that section 188 is no bar to a suit for ejectment by one of the co-sharer landlords when the suit is brought for ejectment under the contract law on the ground of breach of the conditions of the lease by the tenant. In the case referred to, the defendant was a tenant-at-will of *nij-jote* lands, and had, in contravention of his lease, cut down trees, excavated a tank, and turned *dhosa* into *jal* land, and otherwise rendered the land unfit for the purposes of the tenancy. As nothing in Chapter V, or Chapter VI. applies to such land, the tenant was liable to ejectment under the law of contract, and the provisions of section 188, therefore, did not apply. In another case[2] before the High Court, it was said that, where three documents had been executed by the tenant, in favour of separate co-sharers, on different dates, stipulating for the separate payment of each co-sharer's share of the rent, the three leases must be held to constitute separate tenancies, one of which could be avoided without affecting the others.

Abatement or reduction of rent:

A co-sharer landlord has no right, independently of the other co-sharers, to grant an abatement of rent of a holding (section 38) or a reduction of rent on the ground of diminution of area under section 52.

An abatement granted by a co-sharer independently of the other co-sharers would not be binding on the latter,[3] or on

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[1] *Hari Pria Debi v. Ram Churn Myti* [1892], I. L. R., 19 Cal. 541. *See* also s. 155 (notes), p. 640, *ante*.

[2] *Harendra Narain Singh Chowdhry* v. *Moran* [1887], I. L. R., 15 Cal. 110.

[3] *Syama Charan Mandal* v. *Saim Mollah* [1897], 1 C. W. N. 415.

himself. Nor can a joint tenant sue separately for abatement or reduction of rent: he must make all the landlords and all the joint tenants parties to the suit.[1]

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

It has been *ruled*[2] by the High Court that a co-sharer landlord cannot apply under section 158 (*ante*, page 661) to have the particulars of a tenancy determined; and the opinion was expressed in the same case that it is extremely doubtful whether a co-sharer can measure land under section 90 (*ante*, page 406).

Application for determination of incidents of tenancy, and power of measurement of land:

In one case[3] cited on the previous page, it was *held* that, when section 188 does not apply owing to separate contract having been entered into with various sets of landlords, one set could apply under section 91 (page 409, *ante*).

A majority of the landlords can apply for a survey and record-of-rights of any estate or tenure or part thereof under section 101, clause (*a*) (*ante*, page 436).

Application for a survey and record-of-rights:

One or more proprietors or tenure-holders may apply for a record of particulars under section 103 (*ante*, page 446), and so obtain a survey of the lands.

Application under section 103.

A joint-landlord may institute a suit under section 106 (*ante*, page 490), for the decision of a dispute regarding an entry in a record-of-rights. The right to object to such an entry is given by that section, not to landlords alone, but to all parties concerned, and the proceeding therefore does not come within the words "anything which the landlord is under this Act *required* or *authorized* to do" in section 188.[4]

Suit for decision of dispute regarding entry in record-of-rights:

Where a *kabuliyat* executed by the holder of a *durmaurasi patta* in favour of his immediate landlord, a *mukar-*

Suit for rent:

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[1] *Bhoopendra Narain Dutt* v. *Romen Krishna Dutt* [1899], I. L. R., 26 Cal. 417; 4 C. W. N. 117.
[2] *Moheeb Ali* v. *Ameer Rai* [1890], I. L. R., 17 Cal. 538.
[3] *Jogesh Prakash Ganguli* v. *Manirudi* [1908], I. L. R., 35 Cal. 417.
[4] *Sher Bahadur Sahu* v. *M. H. Mackenzie* [1902], 7 C. W. N. 400.

What a co-sharer landlord can, and what he cannot, do under section 188 (*contd.*)—

raridar, provides, *first*, that the former should have his name entered in the *zamindar's serishta* in place of the *mukarraridar's* name, and should pay rent direct to the *zamindar*; and, *secondly*, that, if the area of the tenure should exceed a certain number of *bighas*, he should pay rent on each excess *bigha*, at the rates of 12 annas and 2 annas, to the *zamindar* and the *mukarraridar*, respectively, it was *held* that, although the *zamindar* and the *mukarraridar* were both landlords, they were not joint landlords within the meaning of section 188, since the suit did not fall under section 52 (*ante* page 265).

Application for appraisement or division of crops:

As an application under section 69 (*ante*, page 332) for the appraisement or division of crops is only authorized by this Act, and not by the Code of Civil Procedure, a joint landlord cannot make a separate application under that section, and the whole body of landlords must join in such an application.[2]

Other applications and proceedings.

A joint landlord cannot apply separately for registration of improvements under section 80 (*ante*, page 366), or for recording evidence of an improvement (section 81, *ante*, page 367), for acquisition of land for building or other purposes for the good of the holding or estate (section 84, *ante*, page 370), and cannot file a notice, and enter an abandoned holding under section 87 (*ante*, page 387), or apply for a settlement of rents under section 105 (*1*) or (*2*) (*ante*, page 482), or make an application for having land alleged to be proprietor's private land recorded as such (section 118, *ante*, page 536), or apply for distraint (section 121, *ante*, page 541), or apply for the attachment and sale of a tenure or holding (section 162, *ante*, page 688), or apply for a declaration that *chur* or *dearah* land has ceased to be *chur* or *dearah* land [section 180 (*3*), *ante*, page 742.]

Matungini Dassi v. *Ram Das Mullick* [1902], 7 C. W. N. 93.
[2] *Nukheda Singh* v. *Ripu Mardan Singh* [1898], 4 C. W. N. 239.

[188A. Notwithstanding anything contained in this Act, every suit between landlord and tenant as such instituted by—

Procedure in suits by joint landlords.—Bengal Act I., 1907; E. B. Assam Act I., 1908.

(*a*) a sole landlord,

(*b*) the entire body of landlords, or

(*c*) one or more co-sharer landlords,

shall be subject to the provisions of sections 143 to 153 (both inclusive);

and to every decree passed in a suit framed under sub-section (*1*) or sub-section (*2*) of section 158B, the provisions of Chapter XIV. shall, so far as may be practicable, be applicable.]

Object of the section.

This section was introduced by the Amending Acts of 1907 and 1908 explicitly to counteract a certain ruling,[1] and to make Chapter XIV. of this Act applicable to proceedings in execution of rent-decrees passed in suits framed under section 158B. *See* also the notes on sections 148A (page 619, *ante*), 158B (page 671, *ante*), 169 (page 701, *ante*), and Schedule III, arts. (*2*) and (*6*), *infra*.

Rules under Act.

Power to make rules regarding procedure, powers of officers, and service of notices.

189. The Local Government may, from time to time, by notification in the official gazette, make rules consistent with this Act—

(*1*) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer—

[1] *Jogendra Nath Ghose* v. *Paban Chandra Ghose* [1904], 8 C. W. N. 472.

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate, and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

Ben. Act V. of 1875.

(*c*) power to cut and thresh the crops on any land, and weigh the produce, with a view to estimating the capabilities of the soil; and

Bengal Act I, 1907; E. B. Assam Act I, 1908.

[(*2*) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act;

(*3*) to prescribe the manner in which landlord's fees shall be transmitted to the landlord; and

(*4*) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17, and 18, clause (*a*), may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with.]

Extended to Orissa—1893.

Rules made by the Local Government, having the force of law.

The rules made by the Local Government under this section, with the Board's instructions thereon, are contained in Appendix V. to this work (*post*). It is to be observed that the rules must be consistent with the Act. Under section 190, sub-section (*5*), *post*, the publication in the official gazette of a rule purporting to be made under this Act is conclusive evidence that the rule has been duly made. The Government Rules, like all rules made under statutory authority, have the force of law.

Rule 1, in Chapter I, of the Government Rules, declares that, in carrying out those rules, Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules. It has been *held*[1] by the High Court that any instructions of the Board of Revenue, contained in the Survey and Settlement Manual, relating to the duties of Revenue-officers when making surveys and preparing records-of-rights under section 101 (*ante*, page 436), such instructions purporting to be instructions to Revenue-officers as judicial officers, and not having been passed by Government in the manner prescribed by sections 189 and 190, are without sanction of law, and are not binding on such officers.

Board's instructions on the Government rules have not the force of law.

Rule 85 of Chapter VI., which permits of applications for settlement of fair rent being made against, or at the instance of, several tenants in one and the same proceeding, has been *held* to have been lawfully made.[2]

Revenue-officers, when settling rents and deciding disputes under Part III. of Chapter X, *ante* (*i. e.*, where a settlement of land-revenue *is not* being made or about to be made), are judicial officers, but they are not judicial officers when settling rents or disposing of objections under Part II. of Chapter X. (*i. e.*, in cases where a settlement of land-revenue *is* being, or is about to be, made).

Revenue-officers when "judicial officers."

The mode of service of notices, where no other mode is prescribed by this Act, or by the rules contained in Chapter V. of the Government Rules, is prescribed in Rule 3 of Chapter I. of the Government Rules, in Appendix V. to this work (*post*).

Service of notices.

Special rules for Eastern Bengal and Assam were issued in the *E. B. Assam Gazette* of August 25, 1909 (Notification No. 2304-R of August 24, 1909), and are reprinted at the end of Appendix V., *post*.

Rules for E. B. Assam.

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[1] *Secretary of State* v. *Nilye Singh* [1893], I. L. R., 21 Cal. 48.
[2] *Upadhya Thakur* v. *Persidh Sing* [1896], I L R., 23 Cal. 723.

Procedure for making, publication, and confirmation of rules.

190. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(*6*) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to, or cancelled by the authority having power to make the same.

Extended to Orissa—1893.

Rules by Government and High Court.

The rules made by the Local Government (including that of Eastern Bengal and Assam) and the High Court will be found in Appendices V. and VII., respectively, to this work (*post*).

The Local Government is authorized by section 189 (*ante*, page 793) to make rules.

The High Court is authorized by section 100 (*ante*, page 423) to make rules defining the powers and duties of managers, and, by section 142 (*ante*, page 558), to make rules for regulating the procedure under Chapter XII., and, by section 143 (*ante*, page 581), to make rules for modifying the Code of Civil Procedure in its application to suits between landlord and tenant. No rules have been made by the High Court under section 143.

Rules by Inspector-General of Registration.

The rules made by the Inspector-General of Registration, under section 69 of the Indian Registration Act, for the registration of documents under the Bengal Tenancy Act, will be found in Appendix VI. to this work (*post*). These rules are not made under this Act.

Provisions as to Temporarily-settled Districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Extended to Orissa—1891.

Principle of this section.

In the Statement of Objects and Reasons, the principle of this section was explained thus:—

The Government has an undoubted right to raise its revenue on the occasion of a fresh settlement. Of this right, no act of the landlord can deprive it; and accordingly, if the landlord were to be bound by a grant at fixed rates made by him so as to extend beyond the term of the settle-

ment, the result would be, that, on the occasion of a new settlement, he might be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenants.[1]

The section was in substance taken from the *Exception* to section 6 of the Rent Commission's Bill.[2] The principle which it embodies is specifically laid down in the Regulations, and is, that the landlord cannot create an interest beyond the term to which his own interest extends.[3]

It has been *held*[4] that, when the holder of a lease from Government in a temporarily-settled area binds himself not to enhance the rents of the tenants holding under him during the term of the lease, the tenants cannot plead that clause of the lease as a defence in a suit for arrears at enhanced rates, for which they have given *kabuliyats*.

Application.

The section applies only to tenures and under-tenures. *See* also notes to section 192 next following, especially the words added to it by the Amending Acts of 1907, 1908.

The section does not apply to an estate which, though not permanently settled in 1793, was permanently settled in 1811.[5] *See* notes on section 3 (*12*), page 73, *ante*.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant, of land not included in an area permanently settled, to hold that land free of rent, or at a particular rent, and, while the lease or contract is in force,—

(*a*) land-revenue is for the first time made payable in respect of the land, or

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[1] Selections p. 189.
[2] *Ibid*, p. 573.
[3] Mr. Reynold's remarks in Selections, p. 573.
[4] *Jahander Box* v. *Ram Lal Hasra* [1910], 14 C. W. N. 470.
[5] *Tamasha Bibi* v *Ashutosh Dhur* [1900], 4 C. W N. 513.

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, [or, of his own motion, shall,] fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

Extended to Orissa—1892.

In the Statement of Objects and Reasons, it was said this section in effect enacts that contracts fixing rents shall, in temporarily-settled tracts, hold good only until a fresh settlement is made, and that the reasons for the provision were similar to those stated in connection with section 191.[1]

Principle of this section.

Section 192 applies to tenants, generally, of land not included in permanently-settled areas.

Application.

Note the words inserted by the latest amending Acts. They were inserted to counteract fraudulent or collusive settlements, free of rent or at specially low rates, made with the object of reducing the total assets of the estate, and, so, of reducing, or of preventing a fair increase of, the revenue. A Revenue-officer can now proceed to fix fair rents in such cases of his own motion.

Object of the words newly added.

Clause (*b*) of section 104 (*ante*, page 467) makes it clear, however, that, notwithstanding anything contained in section 192, a Revenue-officer making a settlement of land-revenue is bound to settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (*j*) of section 102 (*ante*, page 442), that the occupant is not entitled to hold the land without payment of rent.

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[1] Selections, p. 199.

Failure to plead want of jurisdiction in the Settlement Officer on appeal to the Special Judge debars a civil suit about the same question.[1] *See* notes on section 104A, page 468, *ante*.

Rights of Pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries, and the like.

Principle.

This section has in view only such rights as are held apart from any tenure or holding. In such cases, it is declared that the provisions of this Act applicable to suits for the recovery of arrears of rent shall, "as far as may be," apply to suits for the recovery of dues on account of such rights. It will be seen, therefore, that the section does not in any way affect existing substantive rights, or create new rights.

Rights over fisheries.

In England, the allegation of a several fishery *primâ facie* imports ownership of the soil;[2] but, even there, a several fishery may exist as an incorporeal hereditament apart from any ownership of the soil under the water. In this country, a *jalkar* does not necessarily imply any right in the soil,[3] but may exist as an incorporeal hereditament and as a right to be exercised on the land of another.[4] A *patni* of a *jalkar* is not an "interest in land" within the meaning of the definition of "tenure" in the District Road Cess Act, 1871 (Bengal Act X. of 1871—

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[1] *Mohim Chandra Roy* v. *Kalitara Debya* [1906], 11 C. W. N. 939.

[2] *Marshall* v. *The Ulleswater Steam Navigation Company* [1863], 3 Best and Smith's Reports 732.

[3] *David* v. *Grish Chunder Guha* [1882], I. L. R., 9 Cal. 183. *See* also *Radha Mohun Mundul* v. *Neel Madhub Mundul* [1875], 24 W. R. 200.

[4] *Lukhee Dasee* v. *Khatima Beebee* [1813], S. D. A. Reports, Vol. II., p. 51; *Forbes* v. *Meer Mahomed Hossein* [1873], 20 W. R. 44, (P. C.): s. c., 12 B. L. R. 210.

since repealed and re-enacted by Bengal Act IX. of 1880).[1] A *jalkar* right is not a mere easement, but is immoveable property within the meaning of Article 145 of the Limitation Act (IX. of 1871—since repealed and re-enacted by Act IX. of 1908).[2]

Nomenclature.

The rights referred to in section 193 are known by different names in this country. For example, a right of fishery, and generally any right connected with water, is called *jalkar*.[3] This term, signifying water right, includes every right which is of that nature, and accordingly embraces not only the rights to fishing and other interests of a similar kind in the produce of a river, but also rights to drift and stranded timber.[4] Forest-rights go by the name of *bankar*.[5] And a grant of trees only is a grant of a forest-right within the meaning of this section.[5] The right of taking fruit from a tree or orchard is called *phalkar*.[6]

Under section 144 (*ante*, page 597) a suit for *jalkar* dues will lie in the Court where the suit for the establishment of the right of fishery would be instituted.[7]

An occupancy-right cannot be acquired in a *jalkar* or fishery.[8] When the grant in merely of a right of fishery, the lessee acquires no right in the sub-soil should the water dry up.[9]

It has recently been *held*,[10] in the case of a suit for rent of a share of a tank, when the construction of the lease showed

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[1] *David* v. *Grish Chunder Guha* [1882], I. L. R., 9 Cal. 183.
[2] *Parbutty Nath Roy Chowdhry* v. *Mudhoo Paroi* [1878], 1 C. L. R. 592.
[3] From *jal*—water.
[4] *Amriteswari Debi* v. *The Secretary of State for India* [1897], I. L. R., 24 Cal. 504 (P. C.): s c., 1 C. W. N. 249
[5] From *ban*—wood or forest: see *Abdulla* v. *Asrafali*, 7 C. L. J. 152.
[6] From *phal*—fruit: see *Gobind Sookool* v. *Gokool Bhukut* [1875], 23 W. R. 304.
[7] *Shibu Halder* v. *Gopi Sundari Dassi* [1897], 1 C. W. N lxxxvii. *See* also *Shib Prosad* v. *Vakai Pali* [1905], I. L. R., 33 Cal. 601.
[8] *Jogabandhu Sahai* v. *Pramathi Nath Rai* [1877], I. L. R., 4 Cal. 767 (following previous cases).
[9] *Mahananda Chakravarti* v. *Mangal Keotain* [1904], I. L. R., 31 Cal. 937.
[10] *Gour Mohun Ghose* v. *Chandi Charan* [1910], 14 C. W. N. clix.

that it was a lease, not only of the water, but also of the land underneath, and that there was a restrictive covenant, as regards the trees growing on the banks, that the lease did not come within the saving provisions of section 193, and that the Bengal Tenancy Act did not apply, and that hence section 153 (*q. v. ante*, page 625) had no application.

Ferry-tolls are not within the scope of this section.[1]

It seems doubtful how far the provisions of section 65, Chapters XII. and XIV. (about distraint and sale for arrears under a decree), are meant to apply to the produce and arrear rents contemplated by this section.[2]

A suit for a consolidated amount, including agricultural and fishing rent, is maintainable under Order II., rules 3 and 6, of Act V. of 1908 (Civil Procedure Code). Section 65 of the Bengal Tenancy Act would not apply to a decree for such a consolidated amount: but a decree-holder in a rent-suit can proceed, either under the Civil Procedure Code or under this Act, Chapter XIV., at his option.[2]

The definition of *rent* (page 61, *ante*) does not exclude fishing rents.[2]

A right of occupancy can be acquired in grazing lands[3] or *chariramna*, but not in a *ghat*.[4]

Saving for Conditions binding on Landlords.

Tenant not enabled by Act to violate conditions binding on andlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act

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[1] *Racchea Sing* v. *Upendra Chandra* [1900], I. L. R., 27 Cal. 239.
[2] *Shib Prosad* v. *Vakai Pali* [1906], I. L. R., 33 Cal 601.
[3] *Fitzpatrick* v. *Wallace* [1869], 11 W. R. 231, followed in *Latif-ur-rahman* v. *Forbes* [1910], 14 C. W. N. 372.
[4] *Hayes* v. *Ghina Barki* [1906], I. L. R., 33 Cal. 459.

shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for Special Enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement Officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government, or under the management of the Court of Wards, or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) any enactment relating to *patni* tenures, in so far as it relates to those tenures; or

(*f*) any other special or local law not repealed, either expressly or by necessary implication, by this Act.

As to the enactments referred to in this section, *see* notes on pages 39, 40, and 41, *ante*, and Appendix II. to this work (*post*).

Interpretation.

The words "under the laws in force," in the proviso to section 37 of Act XI. of 1859, have reference to assessment or enhancement of rent, and not to the rules as to the mode of acquisition of occupancy-rights, and mean "under the laws for the time being in force." A purchaser of an entire estate sold for arrears of revenue sued the cultivating *raiyats* for ejectment. The defendants contended that their interests were protected by the proviso to section 37 of Act XI. of 1859. It was found that the holdings of the defendants consisted of land held by them, partly, for more than twelve years, and partly for less than twelve years, at the date of the sale, and that the two classes of lands were undistinguishable. Upon an objection that the defendants "under the law in force," *i. e.*, Act X. of 1859, could not acquire rights of occupancy in all the land held by them, and, as such, they were not protected by the proviso to section 37 of Act XI. of 1859, it was *held*[1] that the defendants were protected by the proviso to section 37 of Act XI. of 1859, inasmuch as they were settled *raiyats* under section 20 of the Bengal Tenancy Act (VIII. of 1885), *the law for the time being in force*, and had, under section 21 of the said Act, occupancy-rights in all lands for the time being held by them.

It was pointed out that Act X. of 1859 came into force on August 1st, 1859, and that Act XI. of 1859 came into force on May 4th, 1859.

Section 195 (*e*) does not include *dur-patnis*. Section 13 of this Act does not apply to *patni* tenures, but it does to *dur-patnis*.[2]

A *patnidar* remains personally liable for arrears of rent notwithstanding a stipulation in the *patni-patta* that the *patni* should be sold for arrears.[3]

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[1] *Sarat Chandra* v. *Asiman Bibi* [1904], I. L. R., 31 Cal. 725.
[2] *See* p. 107, *ante*, and the cases cited thereon, and p. 109 (note 3).
[3] *Sourindra Mohan Tagore* v. *Sarnamoyi* [1899], I. L. R., 26 Cal. 103.

Decided cases

The respondent held certain properties under the appellant on *patni* tenure on terms which were embodied in two *kabuliyats* executed by the respondent in 1885 and 1893, respectively, in the former of which it was stated that "the annual *jama* of this *patni mahal* is fixed at Rs. 6,000..... Besides the said *patni* rent, I take upon myself the duty of depositing in the Collectorate the Government revenue of Rs. 40,156 fixed for the eight-anna share of the said mahals." The *kabuliyat* of 1893 was to the effect that, "having agreed to pay an additional rent of Rs. 1,000 in respect of the *patni* which I took .....on the condition of paying you a *patni jama* of Rs. 6,000 per year, and of the Rs. 40,156, into the Collectorate year by year, and kist by kist, as Government revenue for the said eight-anna share, I hereby promise .....that, from the present year, I shall pay the Rs. 1,000 in excess as *jama* for my said *patni taluq*." Provision was also made in the *kabuliyats* for payment by the respondent of certain cesses. On default in payment of the *jama* of Rs. 7,000 of the cesses, they were to be recovered as arrears of rent under Regulation VIII. of 1819; but, for default in payment of the Government revenue, the penalty was declared to be forfeiture of the tenure: It was *held*[1] (affirming the decision of the High Court) that, according to the true construction of the *kabuliyats* read, with Regulation VIII. of 1819, the Government revenue was not "money payable to the landlord," and, therefore, not "rent" within the meaning of section 3, clause (*5*), of the Bengal Tenancy Act (VIII. of 1885); and, consequently, it could not be recovered by summary sale under the provisions of Regulation VIII. of 1819.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

[1] *Jotindra Mohan* v. *Jarao Kumari* [1905], I. L. R., 33 Cal. 140 (P. C.).

In the Report of the Select Committee it was said:—

Object of section 196

In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme Legislature, find itself practically debarred, for all time to come, from dealing with almost every question affecting the relations of agricultural landlords and tenants.[1]

Supersession of the section.

Power to repeal or amend this or any other Act of the Supreme Legislature is now given to the Bengal Legislative Council by section 5 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), the only condition imposed being the obtaining of previous sanction from the Governor-General.

Extent of application,

Query.—Does this section authorize the Local Government of East Bengal and Assam to repeal, amend, or otherwise alter this Act as it stood prior to October 1905. If not, is the legislation of 1908 (E. B. Assam Act I., 1908) technically valid even if the previous consent of the Governor-General in Council was obtained? Does the India Councils Act of 1892 extend to the Province of East Bengal and Assam, which did not exist as a separate Local Government before 1905.

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[1] Selections, p. 389.

SCHEDULE I.

(*See section 2.*)

REPEAL OF ENACTMENTS.

Number and year.	SUBJECT OF REGULATION.	Extent of repeal.
	Regulations of the Bengal Code.	
VIII. of 1793.	A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the *zamindars*, independent *taluqdars*, and other actual proprietors of land in Bengal, Bihar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52 53, 54, 55, 64, and 65
XII of 1805.	A Regulation for the settlement and collection of the public revenue in the *Zilla* of Cuttack, including the *Parganas* of Pattaspur, Kummadichour, and Bagrae, at present included in the *Zilla* of Midnapore.	Section 7.
V. of 1812.	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII. of 1812.	A Regulation for explaining section 2, Regulation V., 1812, and rescinding sections 3 and 4, Regulation XLIV., 1793, and sections 3 and 4, Regulation L., 1795 and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI. of 1825.	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

SCHEDULE I.—(*contd.*).

REPEAL OF ENACTMENTS—(*contd.*).

Number and year.	SUBJECT OF ACT.	Extent of repeal
	Acts of the Bengal Council.	
VI. of 1862.	An Act to amend Act X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV. of 1867	An Act to explain and amend Act VI. of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII. of 1869.	An Act to amend the procedure in suits between landlords and tenants.	The whole Act.
VIII. of 1879.	An Act to define and limit the powers of Settlement Officers.	The whole Act.
	Act of the Governor-General in Council.	
X. of 1859.	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Note.—Bengal Act V. of 1894 was repealed by the Bengal Tenancy Amendment Act (III. of 1898). *See* notes to section 110 (page 513) and section 115 (page 528).

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See *Sections 56 and 57.*)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; *Thana*
3. Tenant's name , Son of
4. Particulars of the holding—

Nukdi, Bighas ; rent Rs.

Bhaoli, Bighas ; Maunds or Rs.

Falkar, Rs.
Bankar, Rs.
Phalkar, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent .

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; *Thana*
3. Tenant's name , Son of
4. Particulars of the holding—

Nukdi, Bighas ; rent Rs.

Bhaoli, Bighas ; Maunds or Rs.

Falkar, Rs.
Bankar, Rs.
Phalkar, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent .

S. 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the years and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

As to special forms of receipt prescribed for particular cases, *see* notes on s. 56, pp. 289, 290, *ante*.
For instructions to Revenue Officers, *see* Board's Circular No. 11 of March 1908.
For instructions to Civil Courts, *see* General Letter No. 2 of 1910 reprinted in Appendix V., *infra*.

(*Schedule II.—Forms of Receipt and Account*)—contd.

| DETAILS OF PAYMENTS (LANDLORD'S PORTION). | | |

(Schedule II.—Forms of Receipt and Account)—concld.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			
	Bighas	Maunds	Rs. A. P.
Bhaoli			
Jalkar	...	...	...
Bankar	...	...	...
Phalkar	...	...	...

	Maunds	Rs. A. P.
4. Demand of the year	...	...
5. Balance of former years (*Bakaya*)		...
		Rs. A. P.
6. Total demand (current and arrear)		...
7. Paid each on account of { Current demand. Arrear demand	Maunds	
8. Paid in kind	...	...
		Rs. A. P.
9. Balance outstanding at end of year		...

10. Signature of the Landlord or his Authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighas	Rate	Rs. A. P.
Nukdi			
Government Cesses			
	Bighas	Maunds	Rs. A. P.
Bhaoli			
Jalkar	...	...	...
Bankar	...	...	...
Phalkar	...	...	...

	Maunds	Rs. A. P.
4. Demand of the year ...	...	...
5. Balance of former years (*Bakaya*)		...
		Rs. A. P.
6. Total demand (current and arrear)		...
7. Paid each on account of { Current demand. Arrear demand	Maunds	
8. Paid in kind	...	...
		Rs. A. P.
9. Balance outstanding at end of year		...

10. Signature of the Landlord or his Authorized Agent

Modified forms of account have been prescribed for use in certain areas.—*See* pp. 289, 290, *ante*.

SCHEDULE III.

LIMITATION.

(See *Section 184.*)

PART I.—*Suits.*

	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	1. To eject any tenure-holder or *raiyat* on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
Bengal Act I., 1907; E. B. Assam Act I., 1908.	[1-(*a*). To eject a non occupancy *raiyat* on the ground of the expiration of the term of his lease.	Six months ...	The expiration of the term.]
Ditto.	2. For the recovery of an arrear of rent [in a suit brought by— (*i*) a sole landlord, (*ii*) the entire body of landlords, or (*iii*) one or more co-sharer landlords—]		
	(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Ditto ...	The date of the service of notice of the deposit.
Ditto.	(*b*) in other cases ...	Three years ...	[The last day of the agricultural year in which the arrear fell due.]
Ditto.	3. To recover possession of land claimed by the plaintiff as [a *raiyat* or an under-*raiyat*.]	Two years ...	The date of dispossession.

SCHEDULE III.—(*contd.*).

LIMITATION—(*contd.*).

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days ...	The date of the decree or order appealed against.
5 From any order of a Collector under this Act, to the Commissioner.	Ditto ...	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, [in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest, which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has, by fraud or force, prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.*	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Bengal Act I., 1907; E. B. Assam Act I., 1908.

* *Formerly* Act XV. of 1877: *now* Act IX. of 1908.

References.

See sections 184 and 185, pages 771 and 772, *ante*, and the notes thereon.

Cognisance of limitation though not

Section 3 of the *Indian Limitation Act* (*now*, Act IX. 1908) and section 184 of the Bengal Tenancy Act empower

raised by defendant.

the Court to take cognisance of the question of limitation, although it has not been raised by the defendant in the Court of first instance, if, upon the proceedings in the case, it appears to be clear that the suit was barred by limitation.[1] In the case referred to, the facts were as follow: On the 9th of February 1895, the plaintiff was dispossessed from his *raiyati* lands, and, on the 31st of May 1895, those lands were attached under section 146 (corresponding *now* to the same section of Act V. of 1898) of the Code of Criminal Procedure (Act XIV. of 1882); and, on the 31st of May 1897, the plaintiff instituted a suit to recover possession of the same: It was *held* that the suit was barred by limitation under article 3, Schedule III. of the Bengal Tenancy Act; and that, limitation having already commenced to run from the 9th February 1895, *i. e.*, from the date of the actual dispossession, the plaintiff could not have a fresh start of limitation from the date of the subsequent attachment by the Criminal Court.

Article 1 of Schedule III.

Article 1 of Schedule III. provides a period of limitation for a suit under clause (*b*) of section 25 seeking the ejectment of a *raiyat* on account of a breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty. But there is no provision regarding suits under clause (*a*) of that section. And it has accordingly been *held*[2] that, for suits for the ejectment of a tenant for misuse of the land rendering it unfit for the purposes of the tenancy, the limitation is that provided by article 32* of Schedule II. to the Indian Limitation Act (XV. of 1877).

* *Now* Art. 32, First Schedule, Act IX., 1908.

Article 1-(*a*).

Article 1-(*a*) is newly inserted in consequence of the recent repeal of section 45 (*see* page 234, *ante*). *See* also section 87 (*3*), page 387, *ante*.

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[1] *Deo Narain Chowdhury* v. *Webb* [1900] I. L. R., 28 Cal. 86.

[2] *Soman Gope* v. *Raghubir Ojha* [1895], I. L. R., 24 Cal. 160; also *see* notes to s. 25, *ante*, p. 163.

Article 2

The word "rent" in article 2 includes also money recoverable under any enactment for the time being in force as if it were rent—*see* notes to section 3, clause (*5*), *ante*, page 67: Consequently article 2 applies to the recovery, under section 44 (*1*) of the Bengal Drainage Act, 1880 (Bengal Act VI. of 1880), of sums referred to in section 42 (*b*) of that Act.[1]

Article 2 includes all suits for the recovery of rent, whether under a registered or an unregistered lease,[2] in respect of land leased for agricultural or horticultural purposes, but not for building purposes, or for establishing a coal depôt. The limitation applicable to a suit for rent of land leased for the last-mentioned purposes is that prescribed by article 116* of Schedule II. to the Indian Limitation Act, 1877.[3]

* *Now*, article 116, First Schedule, Act IX, 1908.

Assignment o rents.

A suit for recovery of arrears of rent, brought by an assignee from the landlord, although the assignment is made after the arrears fell due, is a suit for rent, and is therefore exempted from the cognisance of the Court of Small Causes.[4] But, since the assignee is not the "landlord" according to the definition of that term in section 3, clause (*4*) (*ante*, page 60), and the defendant is not a tenant within the meaning of section 3, clause (*3*) (*ante*, page 58), the extended period of limitation provided in Schedule III. article 2, of the present Act, is not applicable to such a suit.[5]

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[1] *Mon Mohini Dasi* v. *Priya Nath Besali* [1904], 8 C. W. N. 640: and *Nafar Chandra* v. *Jyoti Kumar* [1907], 11 C. W. N. 57.

[2] *Iswari Pershad Narain Sahi* v. *Crowdy* [1890], I. L. R., 17 Cal. 469; *Mackenzie* v. *Haji Syed Mahomed Ali Khan* [1891], I. L. R., 19 Cal. 1.

[3] *Raniganj Coal Association* v. *Judoonath Ghose* [1892], I. L. R., 19 Cal. 489 *See* also *Umrao Bibi* v. *Mahomed Rajabi* [1899], I. L. R., 27 Cal 205.

[4] *Srish Chunder Bose* v. *Nachim Kazi* [1900], I. L. R., 27 Cal. 827: s. c., 4 C. W. N. 357. *See* also *Sheikh Munsar* v. *Luke Nath Roy* [1889], 4 C. W. N. 10; also notes to s. 66 (p. 319, *ante*), and to s. 148 (*h*) (p. 615, *ante*).

[5] *Mohendra Nath Kalamoree* v. *Koilash Chandra Dogra* [1900], 4 C. W. N. 605: This case was distinguished in *Shashi Kumar Mirbahar* v. *Sita Nath Bannerjee* [1908], I. L. R., 35 Cal. 744. In the former case, the plaintiff was not the transferee of the whole interest of the former landlord, and so, was held not to be a "landlord" within the meaning of this Act.—*See* notes to s. 184 (p. 771, *ante*).

Article 2, clause (a).

When co-sharer landlords are jointly and severally entitled to the rent claimed, the service of a notice of deposit of rent under section 61 (page 300, *ante*) on any one of them will not reduce the period of limitation to six months, as provided in this article.[1] This article applies now to all suits for rent, whether brought by a sole landlord or a co-sharer landlord.[2] *See* also sections 148A (page 619), 158B (page 671), 169 (page 701), and 188A (page 793), *ante*.

Article 2, clause (b).

Under section 29 of Bengal Act VIII. of 1869, it was *held*[3] that the last day on which a suit for recovery of arrears of rent could be instituted was the last day of the third year from the close of the year in which the rent became payable. The same rule has been enunciated under the present Act, and it has been *held*[4] that the period of limitation in a suit for rent is three years from the last day of the Bengali year in which the arrear fell due.

Where rent is payable by instalments, the limitation of three years must be reckoned, not from the date of the instalments, but from the last day of the year in which the arrear becomes due.[5] The same rule applies to produce-rents.

In a case[6] under the old Act, it was *held* that, where rent is payable in kind, as the actual grain is not producible at any time within three years from the time it became due, the money-value of the grain, as it stood when it was ready for delivery, and ought to have been delivered, must necessarily be taken to represent the grain itself.

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[1] *Rup Chand Mahton* v. *Gudar Singh* [1900], I. L. R., 29 Cal. 283.

[2] *Jogendra Nath Roy* v. *Nogendra Narain Nandi* [1907], 11 C. W. N. 1026.

[3] *Kashikant Bhuttacharji* v. *Rohinikant Bhuttacharji* [1880], I. L. R., 6 Cal. 325 (F. B.).

[4] *Hurro Kumar Ghose* v. *Kali Krishna Thakur* [1889], I. L. R., 17 Cal. 251; *Burna Moyi Dassee* v. *Burma Moyi Chowdhurani* [1895], I. L. R., 23 Cal. 191.

[5] *Gobind Koomar Chowdhry* v. *Huro Gopal Nag* [1869], 11 W. R. 537.

[6] *Krishto Bundhoo Bhuttacharjee* v. *Roti Shaikh* [1876], 25 W. R. 307. *See* notes to s. 54, p. 281, *ante*.

The word 'arrear' in column three means rent in arrear. When the period of limitation (prescribed in this Schedule) has expired, the plaintiff cannot fall back on the Limitation Act,[1] as its operation is expressly limited by the provisions of Chapter XVI.—*vide* section 185 (*2*), page 772, *ante*.

Article 3 was introduced into the Act in consequence of a recommendation of the Rent Commission,[2] which was adopted by the Select Committee, in these words:— Article 3.

> We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-*raiyat* of land comprised in his holding; and, following the precedent presented by section 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected.[3]

Until the amendments of 1907, 1908, this article referred only to occupancy-*raiyats*. Now it applies to all *raiyats* [including non-occupancy *raiyats*—*see* section 4 (*c*), page 80, *ante*] and under-*raiyats*. This modification disposes of the question as to the period of limitation allowable to a non-occupancy *raiyat*, about which conflicting views were held formerly.[4] All tenants can apparently sue, under section 9 of the Specific Relief Act (I. of 1877), for restoration to possession within six months of dispossession, and no question of title can be determined in such a case.

In some of the earlier cases[5] under the Act, it was *held* that article 3 related to suits brought by an occupancy-*raiyat* against his landlord, and not to a suit brought against a third party, who was a trespasser. Gradually a wider meaning began

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[1] *Kalicharan* v. *Harendra Lal*, 4 C. L. J. 553.
[2] Rent Commission's Report, para. 158.
[3] Selections, p. 242.
[4] See *Tamizudin* v. *Ashrab Ali* [1904], I. L. R., 31 Cal. 647 (overruling *Bhagurati Charan* v. *Luton Mandal* [1902], 7 C. W. N. 218. *See* also notes to s. 44, p. 234, *ante*.
[5] *Ramjanee Bibee* v. *Amoo Beparee* [1888], I. L. R., 15 Cal. 317; *Chunder Kishore Dey* v. *Rajkishore Mozumdar* [1888], I. L. R., 15 Cal. 450.

Article 3—(*contd.*).

to be attached to the article. For example, it was *held*[1] that the article applied to all suits by occupancy-*raiyats* for the recovery of possession of land from which they had been dispossessed by their landlords, and in which the title of the *raiyats* was denied and put in issue.

Where the plaintiffs sued, as occupancy-*raiyats*, to recover possession of land from which they had been dispossessed by the defendants, one of whom was one of their landlords, and the others were persons who had acted in collusion with him, it was *held*[2] that this article was applicable.

In another case,[3] it was laid down that the operation of the article is not restricted to suits against the landlord, and that it applies also to a suit brought against a tenant with whom the land has been settled by the landlord :—

We are not aware of any decision (there is none reported) which limits the article against the landlord alone, and holds that it does not apply to a suit against a person holding under the landlord. The omission to add the landlord as a party would not, in our opinion, extend the period of limitation from two to twelve years. It is the circumstance of the ouster, and the fact that a particular person has ousted the plaintiff, which give rise to the necessity of his proving his occupancy-right as against that person, and therefore makes it necessary for him to sue to recover possession of the land, claiming it to be held by him as an occupancy-*raiyat*.[4]

Similarly, where the dispossessing defendants had been inducted into the land by the agents of the landlord,[5] or where,

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[1] *Saraswati Dasi* v. *Horitarun Chuckerbutti* [1889], I. L. R., 16 Cal. 741; *Ramdhan Bhadra* v. *Ram Kumar Dey* [1890], I. L. R., 17 Cal. 976.

[2] *Joolmutty Bewa* v. *Kali Prasanna Roy* [1893], I. L. R., 28 Cal. 127: s. c., 4 C. W. N. 803 [F. B.]; *Parameswar Nomosudra* v. *Kali Mohun Nomosudra* [1900], I. L. R., 28 Cal 127: s. c., 4 C. W. N 801: *See* also *Deo Narain* v. *Webb* [1900], I. L. R., 28 Cal. 86 (*see* f.-n. 1 on p. 814, *ante*); and *Rakhit Mahanta* v. *Paddo Bauri* [1905], 9 C. W. N. 54.

[3] *Bheka Singh* v. *Nakchhed Singh* [1896], I. L. R., 24 Cal. 40.

[4] *Ibid*, at p. 43.

[5] *Chintamoni Sahu* v. *Upendra Nath Sarnokar* [1899], 4 C. W. N. 326.

after the ouster, the defendant took a settlement from the landlord,[1] the two years' limitation has been held to be applicable.

The two years period of limitation applies, whether the dispossession be by a fractional landlord, the sole landlord, or the entire body of landlords.[2] But, where the landlord has no connection with the ouster, and has not had, directly or indirectly, any hand in it, the period of limitation applicable is twelve years, although the defendant may claim to hold under the same landlord as the plaintiff.[3]

Where, again, an occupancy-*raiyat* has been dispossessed from his holding by his landlord, not as a landlord, but as the representative of the person whose right, title, and interest he has purchased in execution of a decree for rent, the special (reduced) period of limitation prescribed by article 3 is not applicable.[4]

If the landlords (defendants) had dispossessed the tenants (plaintiffs) in their capacity as landlords, and not as purchasers, they could claim the benefit of the special period of limitation of this article.[5]

Where the plaintiff purchased an occupancy-holding at an auction-sale in execution of a mortgage-decree against an occupancy-*raiyat*, and sued the landlord to recover possession of the same, although the plaintiff had never been in actual possession at all, and his predecessor had been ejected from possession by the landlord of the occupancy-holding more than two years before suit, and the latter claimed to maintain his possession by virtue

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[1] *Hara Kumar Nath* v. *Sheikh Nasaruddin* [1900], 4 C. W. N. 665 (dissented from in *Ranijulla* v. *Ishab Dali* [1902], I. L. R., 29 Cal. 610).

[2] *Parameswar Nomosudra* v. *Kali Mohun Nomosudra* [1900], 4 C. W. N. 801; *Ananda Sundari* v. *Kabalram* [1903], 7 C. W. N. 542.

[3] *Eradut* v. *Daloo* [1893], 1 C. W. N. 573; *Ranijulla* v. *Ishab Dali* [1902], I. L. R., 29 Cal. 610 (dissenting from *Hara Kumar Nath* v. *Sheikh Nasaruddin* [1900], 4 C. W. N. 665).

[4] *Akhoy Churn Mookerjee* v. *Shaik Titu* [1897], 2 C. W. N. 175 (referred to in the case quoted in the next following footnote (5).

[5] *Sarat Chunder Chatterjee* v. *Iswar Chunder Saha* [1910], 14 C. W. N. lxxix.

Article 3—(*contd.*).

of a decree which he obtained for possession as against the occupancy-*raiyat*, the mortgagor, it was *held*[1] that the case was not governed by the special limitation of two years.

Nor does it apply where a *raiyat* had been wrongfully dispossessed by one co-sharer, but the *raiyat's* title had nevertheless been recognized subsequently by all parties up to within two years of the suit.[2]

Article 3 does not apply to suits for recovery of possession of homestead land not held as part of an occupancy-holding,[3] or to suits brought by under-*raiyats* for the possession of land sub-let to them by an occupancy-*raiyat*.[4]

But the amendments of 1907, 1908, have extended this article to under-*raiyats*.

The period of limitation runs from the date of actual ouster; and if, subsequent to the ouster, some dispute arises between the parties, and an order is passed under section 146 of the Code of Criminal Procedure attaching the land, the limitation which has already begun to run does not cease, and the plaintiff does not get a fresh start of limitation from the date when the order under section 146 is made.[5]

Act V., 1898.

Court-fees.

Ad-valorem court-fees are payable[6] on such an application for recovery of possession, and not merely one year's rent under section 7, clause 11 (*e*), of the Court Fees Act.

Act VII., 1870.

Article 6.

Cf. section 58 of Bengal Act VIII. of 1869. This article has been slightly altered by the recent Amending Acts.

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[1] *Dinobundhu Saha* v. *Lolit Mohun Moitra* [1898], 2 C. W. N. 595.
[2] *Sarifudin* v. *Chandra Moni* [1901], 5 C. W. N. 405.
[3] *Abdull* v. *Kutban* [1897], 1 C. W. N. clxxi.
[4] *Bhagaban Chunder Shaha* v. *Jagneshar Ghose* [1898], 2 C. W. N. cccxviii.
[5] *Dew Narain Chowdhury* v. *Webb* [1900], I. L. R., 28 Cal. 86: 5 C. W. N. 160.
[6] *Farsand Ali* v. *Mohunt Lal Puri* [1905], I. L. R., 32 Cal. 268.

The period of limitation under article 6 runs from the date of the decree, and not from the date fixed for payment.[1] Article 6—(*contd.*).

An acknowledgment of liability (under section 19 of the Limitation Act) will give a fresh starting point for counting limitation.[2]

Article 6 applies to decrees made under the present Act, as well as to decrees made under any Act repealed by it. The article is applicable to all decrees in rent-suits[3] under this Act.

An *ex-parte* rent-decree having been obtained on the 30th May 1888 for a sum under Rs. 500, the decree-holder, on the 27th May 1889, applied for execution thereof, and attached certain properties of the judgment-debtor, the date fixed for the sale being the 31st August 1889. The judgment-debtor applied under section 108 of the Code of Civil Procedure for a re-hearing of the rent-suit, and, on the day fixed for the sale, applied for stay of execution. The sale was stayed, and the Court, of its own motion, and for its own convenience, directed the execution-case to be struck off the file "for the present." On the 28th December 1889, the Court passed an order refusing a re-hearing of the suit. In January 1892, the decree-holder again applied for execution, at the same time praying that his application might be taken to be in continuation of his former application of the 27th May 1889. It was *held*[4] that the application was one in continuation of the former proceedings in execution, so far, at least, as regarded the property mentioned in the former application; but that, as regards other properties, it must be held to be barred, as not having been made within three years from the decree of the 30th May 1888.

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[1] *Ram Saday Mukerjee* v. *Dwarka Nath Mukerjee* [1895], I. L. R., 22 Cal. 644. Compare *Mamtasul Huq* v. *Nirbhai Singh* [1883], I. L. R., 9 Cal. 711 (F. B.).

[2] *Harihar Lal* v. *Gyanendra Prasad* [1905], 9 C. W. N. 1025.

[3] The words "inclusive of the cost" were inserted in article 6 in consequence of the ruling in the case of *Kadumbini Dabya* v. *Koylash Chunder Pal Chowdhry* [1880], I. L. R., 6 Cal. 554, in which it was *held* under the old Act that the costs of appeals in execution-proceedings should not be added to the decree.

[4] *Baikanta Nath Mittra* v. *Aughore Nath Ghose* [1893], I. L. R., 21 Cal. 387. *See* also *Chandra Prodhan* v. *Gopi Mohun Shaha* [1887], I. L. R., 14 Cal. 385.

Article 6—(*contd.*).

The "final decree" means the decree in the suit, and not an order on an application made to set aside the *ex-parte* decree.[1]

When the execution of a decree has been unavoidably stayed owing to proceedings being taken to set aside the decree which it is sought to execute, an application for execution made after the expiry of the period of limitation has been regarded as one in continuation of former proceedings.[2]

It has been *held*[3] that this article does not apply to decrees obtained by one co-sharer landlord. But this would appear to be no longer the law, bearing in mind the changes introduced into this Act by sections 148A (page 619), 158B (page 671), 188A (page 793) with the object of making decrees obtained by co-sharers tantamount to decrees obtained by the whole body of landlords.

A person, holding a rent-decree for a sum less than Rs. 500, applied for its execution on the latest day allowable by this article. On issue of notice under section 248, Civil Procedure Code, it was found that the judgment-debtor had died before the date of the application for execution. Within 18 days from the date of service of notice, the decree-holder got the heirs of the judgment-debtor substituted, and proceeded with the execution as against them. On appeal to the High Court, it was *held*[4] that the proceeding against the legal representative of the judgment-debtor was not time-barred, as it was in continuation of the proceedings started on the last day of the period of limitation.

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[1] *Baikanta Nath Mittra* v. *Aughore Nath Bose* [1893], I. L. R., 21 Cal. 387. *See* also *Chandra Prodhan* v. *Gopi Mohun Shaha* [1887], I. L. R., 14 Cal. 385.

[2] *Issurree Dassee* v. *Abdool Khalak* [1878], I. L. R., 4 Cal. 415 (following the case of *Booboo Pyaroo Tuhobildarinee* v. *Syud Nasir Hossain* [1875], 23 W. R. 123). But *see* (*contra*) *Sarup Garjan Sing* v. *Watson* [1901], 6 C. W. N. 735.

[3] *Kedar Nath* v. *Ardhra* [1900], 5 C. W. N. 763.

[4] *Kumar Kalanand Singh* v. *Chandra Kishore Jha* [1910], 14 C. W. N. 971 (relying on the principle laid down in *Chhayemanissa* v. *Basiran* [1910], I. L. R., 37 Cal. 399).

APPENDIX I.

Some Important Notifications as to the Commencement and Local Extent of the Bengal Tenancy Act, 1885.

Commencement of Act.

The 4th September 1885.—In exercise of the powers vested in him by section 1 (*2*) of the Bengal Tenancy Act, and with the sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to declare that the Act shall come into force on the 1st November 1885.

[Published in *Calcutta Gazette*, 9th September 1885, Part I., page 874.]

Notifications extending Act VIII. of 1885 (as amended by Bengal Act III. of 1898) to the Jalpaiguri District.

No. 563 T. R.—The 5th November 1898.—In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act, XIV. of 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act, VIII. of 1885,[1] to the whole of the Jalpaiguri district, except the Western Duars, with effect from the 1st of January 1899, subject to the following restrictions and modifications, namely :—

I.—Sub-sections (*2*) and (*3*) of section 1 of the said Act shall be omitted; and

II.—the words "in the territories to which this Act extends by its own operation," in sub-section (*1*), and the whole of sub-section (*2*), of section 2 of the said Act, shall be omitted.

[Published in *Calcutta Gazette*, 9th November 1898, Part I., page 1156A.]

[1] This includes the Amending Act, Bengal Act III. of 1898, which was in force when this Notification was published.

No. 964 T. R.—The 5th November 1898.—In exercise of the powers conferred by the Scheduled Districts Act, XIV. of 1874, section 5 and section 5A (inserted by the Repealing and Amending Act, 1891), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act, VIII. of 1885,[1] to the portion of the Jalpaiguri district known as the Western Duars, with effect from the 1st January 1899, subject to the following restrictions and modifications, namely:—

I.—Sub-sections (*2*) and (*3*) of section 1 of the said Bengal Tenancy Act shall be omitted.

II.—The words "in the territories to which this Act extends by its own operation," in sub-section (*1*), and the whole of sub-section (*2*), of section 2 of the said Act, shall be omitted.

III.—Nothing in the said Bengal Tenancy Act, other than the provisions of sub-section (*1*) of section 2, as modified by clause II. of this Notification, shall apply to any lands heretofore or hereafter granted or leased by Government to any person or Company under an instrument in writing for the cultivation of tea, or for the reclamation of land under the Arable Waste Land Rules.

IV.—Where there is anything in the said Bengal Tenancy Act, which is inconsistent with any rights or obligations of a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land as defined in settlement-proceedings heretofore approved by Government, or with the terms of a lease heretofore granted by Government to a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land, such rights, obligations, or terms shall be enforceable notwithstanding anything contained in the said Act.

[Published in *Calcutta Gazette*, 9th November 1898, Part I., page 1156A.]

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[1] This includes the Amending Act, Bengal Act III. of 1898, which was in force when this Notification was published.

Notifications extending Act VIII. of 1885 (in part) and Bengal Act III. of 1898 to the Division of Orissa.

The 10th September 1891.—Under section 1, clause (3), of the Bengal Tenancy Act, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, is pleased to extend the following portions of the Act to the Division of Orissa:—

Chapter X.[1] and sections 3 to 5, 19 to 26, 41 to 49, 53 to 75, and 191.

[Published in *Calcutta Gazette*, 16th September 1891, Part I., page 839.]

No. 2448 L. R.—The 27th June 1892.—Under section 1, clause (3), of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government's Notification, dated 10th September, 1891, published in the *Calcutta Gazette* of the 16th *idem*, Part I., page 839, is pleased to extend sections 27-38 and 80 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 29th June 1892, Part I., page 673.]

No. 115 L. R.—The 5th January 1893.—Under section 1, clause (3), of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government's Notification No. 2448 L. R., dated the 27th June 1892, published in the *Calcutta Gazette* of the 29th June 1892, Part I, page 673, is pleased to extend sections 189 and 190 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 11th January 1893, Part I., page 20.]

No. 99 L. R..—The 7th January 1896.—Under section 1, clause (3), of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-

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[1] This extension of Chapter X. is superseded by the extension to Orissa (by Notification No. 957 T. R., dated the 5th November 1898, *post*, p. 826) of Bengal Act III. of 1898, which enacts a new Chapter X.

Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government Notification No. 115 L. R., dated the 5th January 1893, published at page 20, Part I., of the *Calcutta Gazette* of the 11th *idem*, is pleased to extend section 39 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 8th January 1896, Part I., page 28.]

No. 971 T. R.—The 17th October 1896.—Under section 1, clause (*3*), of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, and in continuation of the Bengal Government Notification No. 99, dated the 7th January 1896, published at page 28, Part I., of the *Calcutta Gazette* of the 8th *idem*, is pleased to extend sections 7, 40, 52, and 192 of the Act to the Division of Orissa.

[Published in *Calcutta Gazette*, 21st October 1896, Part I., page 1081.]

No. 957 T. R.—The 5th November 1898.—Under section 1, clause (*3*), of the Bengal Tenancy Act, VIII. of 1885, the Lieutenant-Governor, with the previous sanction of His Excellency the Governor-General in Council, is pleased to extend the provisions of the Bengal Tenancy (Amendment) Act, III. of 1898, to the Division of Orissa.

[Published in *Calcutta Gazette*, 9th November 1898, Part I., page 1156A.]

Notification extending Parts of Act VIII. of 1885 (as amended by Bengal Act III. of 1898) to the Chota Nagpur Division (except the district of Manbhum.)

No. 721 L. R.—The 9th February 1903.—In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act, 1874, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to extend to the Chota Nagpur Division, except the district of Manbhum, the portions of the Bengal Tenancy Act, 1885 [as amended by the Bengal Tenancy (Amendment) Act, 1898], which are specified in column 1 of the

following table, subject to the restrictions and modifications specified in column 2 of that table:—

Portions of the Bengal Tenancy Act, 1885 [as amended by the Bengal Tenancy (Amendment) Act, 1898.]	Restrictions and modifications.
1	2
Chapter I :—section 1, sub-section (1).	.....
" " 3, clause (1) ...	*For* Collector, *read* Deputy Commissioner.
" " 3, " (2) ...	.....
" " 3, clauses (3) and (4)	.....
" " 3, clause (7) ...	*For* or an under-tenure-holder, *read* and includes an under-tenure.
" " 3, " (15) ...	.....
" " 3, " (17) ...	.....
Chapter II :— " 5, sub-section (1).	.....
" X: " 101, " (1).	*Omit* in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned.
" " 101, sub-sections (3) and (4).	.....
" " 102 ...	*Omit the words from* and may include *to the end.*
" " 103A ...	In sub-section (2), *omit* and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3).
" " 103B ...	.....

Portions of the Bengal Tenancy Act, 1885 [as amended by the Bengal Tenancy (Amendment) Act, 1898.]	Restrictions and modifications.
1	2
Chapter X.—section 104G, sub-section (*2*) ...	*For* Part, *read* Chapter. *Omit* but not so as to affect any order passed by a Civil Court under section 104H.
" " 111 ...	*Omit* subject to the provisions of section 104H.
" " 111A ...	*Omit* or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F.
	In the proviso, *omit* framed in pursuance of an order made under section 101, sub-section (*2*), clause (*d*).
" " 114 ...	*Omit* in any case except where a settlement of land-revenue is being or is about to be made.
Chapter XIII :—section 148 opening words and clause (*b*) ...	*For* section 50 of the Code of Civil Procedure, *read* sections 46 and 47 of the Chota Nagpur Landlord and Tenant Procedure Act.
Chapter XVII :—section 189 ...	.....
" " 190 ...	In sub-section (*2*), *omit* or High Court, *and omit* and, in the case of rules made by any other authority, in the prescribed manner.
" " 195 ...	*Omit* clauses (*b*), (*c*), (*d*), and (*e*).

[Published in *Calcutta Gazette*, 11th February 1903, Part I., page. 172.]

Notifications extending section 31A (1) of Act VIII. of 1885.

No. 1470-T. R.—The 1st September 1900.—It is hereby notified for general information that the Lieutenant-Governor has been pleased to extend the provisions of section 31A (1) of the Bengal Tenancy Act, VIII. of 1885, as amended by Act III. (B. C.) of 1898, to the district of Tippera.

[Published in *Calcutta Gazette*, 5th September, 1900, Part I., page 970.]

No. 1091-L. R.—The 18th February 1904.—It is hereby notified for general information that the Lieutenant-Governor has been pleased to extend the provisions of section 31A (1) of the Bengal Tenancy Act, VIII. of 1885, as amended by Act III. (B. C.) of 1898, to Government estate Taufir|Barhia, bearing tauzi No 1309, in the district of Monghyr.

[Published in *Calcutta Gazette*, 24th February, 1904, Part I., page 317.]

Notification declaring Parts of Act VIII. of 1885 to be in force in the Sonthal Parganas.

No. 771-L. R.—The 20th February 1897.—Under the powers vested in him by section 3 of Regulation III. of 1872 (Sonthal Parganas Settlement Regulation), as amended by Regulation III. of 1886, the Lieutenant-Governor directs that section 84 of the Bengal Tenancy Act, VIII. of 1885, shall have force and effect in the Sonthal Parganas from this date.

[Published in *Calcutta Gazette*, 24th February 1897, Part I. page 281.]

No. 1338-L. R—The 1st March 1904.—Under the powers vested in him by section 3 of the Sonthal Parganas Settlement Regulation, III. of 1872, as amended by section 3 of the Sonthal Parganas Justice and Laws Regulation, III. of 1899, the Lieutenant-Governor directs that section 56 and clauses (1) and (3) of section 58 of the Bengal Tenancy Act, VIII. of 1885, shall be deemed to be in force in the Sonthal Parganas from this date.

[Published in *Calcutta Gazette*, 2nd March 1904, Part I., page 347.]

APPENDIX II.

EXTANT ENACTMENTS, OTHER THAN THE BENGAL TENANCY ACT, 1885, WHICH REGULATE AGRICULTURAL TENANCIES IN BENGAL.

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885.*

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. I. of 1793.	Permanent Settlement.	7	*Zamindars* and their rent-collectors to conduct themselves with good faith and moderation towards their dependent *taluqdars* and *raiyats*.
Do.	Do.	8 (*1*)	Reservation of power to enact Regulations for the protection and welfare of dependent *taluqdars*, *raiyats*, and other cultivators of the soil.
Reg. II. of 1793.	Land-revenue.	8 (*1*)	Collectors to levy rents from estates held *khas*.
Do.	Do.	33	Power of Board of Revenue to require the personal attendance of landlords and tenants.
Reg. VIII. of 1793.	Decennial Settlement.	40	Consolidation of *malguzari* and private lands in dependent *taluqs* not to be a ground for increasing rents of *taluqdars*.
Do.	Do.	49, 50	Prohibition of increase of rent of certain *istimrardars* (*mukarraridars*).

APPENDIX II.—(*contd.*).

PART. A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. VIII. of 1793.	Decennial Settlement.	66	Landlords and tenants not to interfere in matters falling within jurisdiction of Courts.
Reg. XXIX. of 1814. Act V. of 1859.	*Ghatwali* lands.	...	Incidents of *ghatwali* tenures.
Reg. V. of 1816.	*Kanungos.*	7	*Kanungos* to keep accounts; to keep registers of *pattas*, etc.; to compile information as to boundaries, produce, and rates of rent; to assist at measurements, etc.
Reg. XII. of 1817.	*Patwaris.*	7	Collector to see that rights of inferior *pattidars* and of tenants as to appointment of *patwaris* are duly maintained.
Do.	Do.	14	Removal of *patwari* on petition of inferior *pattidars* or of tenants.
Do.	Do.	16	*Patwaris* to keep registers and accounts.
Do.	Do.	18 to 21, 34	Remuneration of *patwaris.*
Reg. I. of 1819.	*Kanungos* and *Patwaris.*	4	Regs. V. of 1816 and XII. of 1817 (noted *supra*) extended to whole of Bengal; power to suspend those Regulations in particular areas; power to alter duties of *kanungos.*

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. VIII. of 1819.	*Patni Taluqs.*	1, 3 to 8, 15, 17.	*Patni taluqs;* periodical sales of tenures at instance of *zamindars*, where the right to sell for arrears of rent was reserved by the lease creating the tenure.
Act XXV. of 1850.	Forfeited Deposits	...	
Act VI. of 1853.	Rent Recovery.	...	
Ben. Act VIII. of 1865.	Do.	...	
Reg. VIII. of 1819.	*Putni Taluqs.*	2	Validation of leases fixing rent in perpetuity, or for more than ten years.
Reg. I. of 1820.	Do.	...	Application of Reg. VIII. of 1819 to other sales for arrears of rent at instance of *zamindar.*
Reg. VII. of 1822.	Land-revenue Settlement.	4	Revenue-settlements not to bar right of Revenue-officers to interfere to adjust the respective rights of *sadar malguzars* and their under-tenants.
Do.	Do.	6 (1), (3), 9 (1), (2), 11 (1), 14 (1), (4), (5), 15, 16, 20.	Power of Collector to procure and record full information as to the rights, interests, privileges, and properties of the agricultural community, and to determine the same, and settle disputes.
Do.	Do.	10 (7)	Rates of rent of cultivating proprietors of lands of which revenue is collected *khas* or farmed.
Reg. IX. of 1833.	Do.	3	

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. VII. of 1822. Reg. IV. of 1828.	Land-revenue Settlement. Do.	14 (*4*), (*5*), 16, 34. 2 (*4*).	Power of Collector to interfere in cases of disputed possession.
Reg. VII. of 1822. Act XX. of 1848.	Do. Landholders' Attendance.	19 ...	Power of Collector to require personal attendance of landlords and tenants.
Reg. VII. of 1822.	Land-revenue Settlement.	20, 21	Trial by Collector of suits and applications as to rents, excessive demands, or exactions of rent, accounts, non-delivery of *pattas* or receipts, &c. (*repealed* wherever Act X. of 1859 applied).
Reg. VI. of 1823.	.....	...	See *post*, on this page.
Reg. IX. of 1825.	Land-revenue Settlement.	23	Extension of territorial operation of the sections of Reg. VII. of 1822 mentioned above.
Reg. VI. of 1823. Reg. V. of 1830. Act X. of 1836.	Indigo Contracts. Do. Do.	... 5 ...	Advances under written agreement for cultivation of indigo.
Reg. XI.[1] of 1825 Act XXXI. of 1858. Ben. Act IV. of 1868.	Alluvion and Diluvion. Alluvial Land Settlement. Alluvion.	... 2 ...	Determination of claims to alluvial land, and of rent payable therefor.

[1] The last paragraph of cl. (*1*) of s. 4 of Reg. XI. of 1825 is repealed by the Bengal Tenancy Act, 1885.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. III. of 1828.	Land-revenue Assessment (Resumed Lands).	13 (*1*).	Grants and leases of land in *Sundarbans*.
Do.	Do.	13 (*2*).	Survey of *Sundarbans*.
Reg. IV. of 1828.	.....	...	See, *ante*, page 834.
Reg. V. of 1830.	.....	...	See, *ante*, page 834.
Reg. IX. of 1833.	.....	...	See, *ante*, page 833.
Act X. of 1836.	.....	...	See, *ante*, page 834.
Act XX. of 1848.	.....	...	See, *ante*, page 834.
Act XXIII. of 1850.	Land-revenue, Calcutta.	3, 4	Distress and sale of property of landlord or tenant for recovery of land-revenue; deduction by tenant from rent when revenue recovered from him.
Act XXV. of 1850.	.....	...	See, *ante*, page 833.
Act VI. of 1853.	.....	...	See, *ante*, page 833.
Act XIII. of 1857.	Opium	...	Cultivation of the poppy.
Act I. of 1878.	Do.	4, 5, 9, 11, 22.	
Act XXXI. of 1858.	.....	...	See, *ante*, page 834.
Act V. of 1859.	.....	...	See, *ante*, page 832.
Act XI. of 1859.	Land-revenue Sales.	7	Notice prohibiting payment to defaulting proprietor of rent falling due after last day of payment of land-revenue.
Ben. Act VII. of 1868.	Do.	7	

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Act XI. of 1859.	Land-revenue Sales.	37, 52	Right of purchaser of estate sold for arrears of revenue— to annul all under-tenures and leases, with certain exceptions, and to enhance rents in certain cases.
Do.	Do.	38 to 44, 46 to 51.	Registration of certain tenures, farms, and leases, to secure protection against annulment on sale of estate for arrears of revenue.
Ben. Act III. of 1862.	Do.	...	
Act XI. of 1859.	Do.	53, 54	Cases in which a purchaser of an estate sold for arrears does not acquire rights in respect of under-tenants or *raiyats* which the previous proprietor did not possess.
Do.	Do.	...	Arrears of rent due on latest day of payment of land-revenue, recoverable by defaulter after that day.
Ben. Act III. of 1862.	.....	...	See, *ante*, on this page.
Ben. Act VIII. of 1862.	*Zamindari Dák* Cess.	12	This Act not to affect contracts or engagements made by *zamindars* with persons holding under them.
Ben. Act VIII. of 1865.	.....	...	See, *ante*, page 833.
Ben. Act IV. of 1868.	.....	...	See, *ante*, page 834.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act VII. of 1868.	Land-revenue Sales.	7	See, *ante*, page 835.
Do.	Do.	11 (amended by Ben. Act II. of 1871).	Sale of tenures for arrears of land-revenue.
Do.	Do.	12 to 14.	Right of purchaser of tenure sold for arrears of revenue— to annul all under-tenures with certain exceptions, and to enhance rents in certain cases.
Ben. Act II. of 1869.	Tenures, *Chota Nagpur.*	...	Registration of *bhuinhari* and *majhahas* tenures, and of conditions, services, and rents incident to them; commutation of conditions and services into money-rent; restoration of persons wrongfully dispossessed.
Ben. Act VI. of 1870.	Village *Chaukidars.*	48 to 61	*Chaukidari chakaran* lands.
Reg. III. of 1872.	Settlement, *Sonthal Parganas.*	...	Rents, etc., in *Sonthal Parganas.*
Reg. II. of 1886.	Rent, *Sonthal Parganas.*	...	
Ben. Act V. of 1875.	Surveys.	...	Survey and demarcation of land.
Act VI. of 1876.	Incumbered Estates, *Chota Nagpur.*	3 (*a*), 4, 16, 17.	Manager to supersede proprietor of incumbered estate in relations with tenants.
Act V. of 1884.	Do.	7	

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Act VI. of 1876.	Incumbered Estates, *Chota Nagpur.*	9	Power of manager of incumbered estate to set aside leases after inquiring into consideration.
Ben. Act III. of 1876.	Irrigation.	28	Abatement of rent on interruption of water-supply.
Do.	Do.	29	Enhancement of rent on restoration of water-supply.
Do.	Do.	83, 84, 90.	Right of distraint for recovery of rent for one year has priority over claim for arrears of water-rate.
Ben. Act VII. of 1876.	Registration of Land.	56	Appointment of Receiver to collect rents, in case of dispute as to possession or title of proprietor, who applies to register his interest.
Do.	Do.	68	Joint and several liability of recorded proprietors and managers of an estate or revenue-free property for discharge of duties and obligations imposed upon proprietors by any law.
Do.	Do.	78	Tenants not bound to pay rent to unregistered proprietor, manager, or mortgagee.
Do.	Do.	79	Receipts of registered proprietors, managers, and mortgagees afford full indemnity to persons paying rent to them.
Do.	Do.	81	Sections 78 and 79, noted above, not to affect written contracts.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	7
No. and year.	Subject.	Section.	Abstract.
Act I. of 1878.	.....	...	See, *ante*, page 835.
Ben. Act VII. of 1878.	Excise.	5, 54.	License required for cultivation of plants, from which intoxicating drugs are produced.
Do.	Do.	16, 63.	Restriction on sale of such plants by cultivators.
Ben. Act I. of 1879, as amended by Ben. Act V. of 1903	Landlord and Tenant, *Chota Nagpur*.	...	Law of landlord and tenant in *Chota Nagpur* (except the District of *Manbhum*).
Ben. Act IX. of 1879.	Court of Wards.	14, 18, 23 (2) (amended by Ben. Act III. of 1881, s. 4) 24, 39.	Powers of Court of Wards and its managers in dealing with property under the charge of that Court.
Do.	Do.	48 (amended by Ben. Act III. of 1881, s. 5).	Payment of rents, cesses, and other demands by such managers.
Do.	Do.	55 (amended by Ben Act III. of 1881, s. 7).	Power of Ward of Court to bring suits for arrears of rent.
Do.	Do.	60.	Disabilities of Wards of Court.
Do.	Do.	63 (inserted by Ben. Act III. of 1881, s. 10).	Recovery of interest on arrears of rent due to manager of Court of Wards.
Ben. Act VI. of 1880, as amended by Ben. Act II of 1902.	Drainage.	30.	Power to declare holders of tenures and under-tenures, instead of landholders, to be liable for payment of drainage-charges to Government.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act VI. of 1880, as amended by Ben. Act II. of 1902.	Drainage.	31.	Drainage-charges a first charge on lands; such charges not avoided by sale of lands, or of any estate, tenure, or under-tenure therein, for arrears of revenue or rent.
Do.	Do.	39.	Power of Collector to recover drainage-charges by letting, mortgaging, or managing improved or reclaimed lands.
Do.	Do.	42 to 45, 48, 50 to 51C.	Recovery of drainage-charges, by landholders and superior tenants, from persons holding land under them— by enhancement of rent; by resort to the certificate-procedure; or by other means.
Do.	Do.	51D to 51J.	Suspension of recovery of drainage-charges from both landholders and tenants in case of failure of crops.
Ben. Act II. of 1902.	Do.	14.	Recovery, under the certificate procedure, of certain subsisting claims by landholders against tenants in respect of the Howrah and Rajapur drainage-schemes.
Do.	Do.	15 to 19.	Reduction of past charges against landholders in respect of the Howrah and Rajapur drainage-schemes; proportionate reduction of amounts recoverable by landholders from tenants.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act IX. of 1880.	Road and Public Works Cesses.	19, 20.	Holders of estates and tenures precluded from suing for or recovering— rent for land or tenure in respect of which no return has been lodged under the Act, rent for land, holding or tenure which is not mentioned in returns so lodged, or rent at a higher rate than is mentioned in such returns.
Do.	Do.	40A (inserted by Ben. Act II. of 1881, s. 4).	Payment of cesses by tenants (other than cultivating *raiyats*) direct to Government as proprietor of tenure.
Do.	Do.	41 (*2*).	Payment of cesses by tenure-holders to their landlords.
Do.	Do.	41 (*3*).	Payment of one-half of cesses by cultivating *raiyats* to their landlords.
Do.	Do.	42 (amended by Ben. Act II. of 1881, s. 5) and 182 (*f*).	Time for making the payments above referred to.
Do.	Do.	47.	Recovery of cesses from tenants, with interest at 12½ *per cent. per annum.*
Do.	Do.	52 to 64, 64A, and 64B (inserted by Act VII. of 1881), 65 to 71, and 182 (*f*).	Fixing and payment of cesses due from tenants of rent-free lands.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act IX. of 1880.	Road and Public Works Cesses.	81,	Recovery by occupiers from owners (or by owners from occupiers) of half the amount of cess paid by the former on account of mines, &c.
Do.	Do.	99.	Power to prohibit tenants from paying rent to any person except the Collector, when cesses, expenses, fines, &c., under Act are not paid; power of Collector to recover rent when prohibition made.
Ben. Act II. of 1882.	Embankments.	55, 74.	Recovery of proportionate share of embankment and water-course charges by *zamindars* and tenure-holders from their tenants.
Do.	Do.	56 to 60, 62 to 66, 68, 69.	Apportionment of such charges between *zamindars* and tenure-holders.
Do.	Do.	61, 67.	Instalments for payment of such charges, and interest on arrears.
Do.	Do.	73.	Power of Collector to mortgage, let in farm, or manage estate for recovery of such charges.
Do.	Do.	87.	Reduction of charges against *zamindars* and tenure-holders on relinquishment of lands taken up for works.
Act XIV. of 1882.	Civil Procedure.	4.	Code of Civil Procedure not to affect laws prescribing a special procedure for suits between landholders and tenants.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Act XIV. of 1882.	Civil Procedure.	4A (inserted by Act VII. of 1888).	Power to modify Code in its application to Revenue Courts trying suits for rent, &c.
Act V. of 1884.	...	...	See, *ante*, page 837.
Reg. II. of 1886.	.....	...	See, *ante*, page 837.
Reg. I. of 1894.	Angul District.	32.	Limitations on rate of interest.
Do.	Do.	39.	Exemption of *raiyat's* holding from sale for arrears due to Government unless he has no other property from which the arrears can be realized.
Ben. Act I. of 1895.	Certificate Procedure for Recovery of Public Demands.	7 (*g*), (*h*) (inserted by Ben. Act I. of 1897, s. 6).	Arrears of rent payable to Government recoverable under the certificate procedure.
Ben. Act III. of 1895.	Land Records Maintenance.	...	Registration of tenants' rights.
Ben. Act VIII. of 1895.	Sanitary Drainage.	23, 24, 35 (*c*).	Half the sanitary drainage-rate, paid by holders of estates and tenures, recoverable from tenure-holders and cultivating *raiyats*; application of Bengal Act IX. of 1880 (Cesses) as to proportions and manner of recovery.
Ben. Act IV. of 1897, as amended by Ben. Act V. of 1903.	Commutation, *Chota Nagpur.*	...	Commutation and record of predial conditions and services.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act V. of 1897.	Partition of Estates.	44, 96 (*2*).	Application of Bengal Act V. of 1875 (Surveys) to estates under partition.
Do.	Do.	44.	Deputy Collectors making partitions to have powers exerciseable by a Revenue-officer employed in preparing a record-of-rights under Chapter X. of the Bengal Tenancy Act, 1885.
Do.	Do.	46.	Particulars as to landlords and tenants and their rights to be recorded by Deputy Collectors.
Do.	Do.	47, 48, 121 (*h*) to (*i*).	Correction and publication of such record.
Do.	Do.	57 (*ii*).	Rental to be shown in partition-paper.
Do.	Do.	64 to 66.	Rent payable, after partition, to proprietor of land occupied by dwelling-house, orchard, &c., of another proprietor.
Do.	Do.	67 to 71.	Redemption of such rent.
Do.	Do.	81.	Splitting-up of tenure or holding, and apportionment of rent thereof.
Do.	Do.	82.	Restriction on division of land held rent-free.
Do.	Do.	83.	Land held at fixed rent on a *patni* or other permanent intermediate tenure, how to be dealt with in partition-proceedings.

APPENDIX II.—(*Continued.*)

PART A.—*Enactments not expressly repealed by, and Enactments passed after the date of, the Bengal Tenancy Act, 1885*—(concld.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Ben. Act V. of 1897.	Partition of Estates.	99.	Saving of *patni* and other tenures, leases, and other incumbrances on partition of estate.
Reg. I. of 1900.	Chittagong Hill-tracts.	18 (*d*), (*f*), (*j*).	Power to make rules as to tenancies.
Reg. III. of 1900.	Rural Police, *Sonthal Parganas.*	8 to 21, 24	Payments by landlords and tenants for support of rural police.
Ben. Act II. of 1902.	.....	...	See *ante*, pages 839 and, 840.
Ben. Act V. of 1903.	.....	...	See *ante*, pages 839 and. 843.
Ben. Act III. of 1904.	Settled Estates.	28 to 34.	Restrictions on alienation of settled estate.

PART B.—*Enactments expressly repealed by the Bengal Tenancy Act, 1885, wherever that Act is in force.*

Reg. VIII. of 1793	Decennial Settlement.	51 to 53.	Prevention of undue exaction from dependent *taluqdars.*
Do.	Do.	54.	Consolidation of former *abwabs*, &c.
Do.	Do.	55.	Prohibition of future *abwabs*, &c.
Do.	Do.	64.	Instalments of rents to be adjusted according to the time of reaping and selling produce.
Do.	Do.	65.	Prohibition of engagements contrary to this Regulation.

APPENDIX II.—(*Concld.*)

PART B.—*Enactments expressly repealed by the Bengal Tenancy Act, 1885, wherever that Act is in force*—(contd.).

1	2	3	4
No. and year.	Subject.	Section.	Abstract.
Reg. V. of 1812	Leases, Land-revenue Sales, &c.	2 to 4.	Grant of leases by proprietors to tenants, and right to receive engagements for payment of rent; prohibition of *abwabs*, &c.; decision of Court required for annulment of lease on attachment or sale.
Do.	Do.	26, 27.	Appointment and removal of managers of joint estates.
Reg. XVIII. of 1812.	Leases and Land-revenue.	2, 3 (2).	Grant of leases by proprietors to tenants; continuance of such leases.
Reg. XI. of 1825.	Alluvion and Diluvion.	4 (1), last paragraph.	Under-tenant liable to increase of rent for land gradually gained by recess of river or sea.
Act X. of 1859.	Rent.	...	Law of landlord and tenant.
Ben. Act VI. of 1862.	Do.	...	
Ben. Act IV. of 1867.	Rent (Appeals).	...	
Ben. Act VIII. of 1879.	Rent Settlement.	...	Recording and enhancement of rents in settlement proceedings.

APPENDIX III.

STATEMENT SHOWING THE AGRICULTURAL YEAR PREVAILING IN DIFFERENT PARTS OF BENGAL, BIHAR, AND ORISSA.

Agricultural year.	Where prevailing.	Description of the year.	Remarks.
Amli	Singbhum and Orissa and southern and western parts of the Midnapore District.	The *Amli* begins on a day called the *Sunia* day, which falls between the 14th of *Bhadro* and 12th of *Aswin*. For obtaining the corresponding calendar year, add 592 from the *Sunia* day up to the middle of *Poush*, and 593 after that.	The present *Amli* year (July, 1911) is 1318.
Bengali	The whole of Bengal Proper, except— the southern and western parts of the Midnapore District; Manbhum; Malda; and part of Purnea. The whole of the Sonthal Parganas except Damni-i-koh, the Godda Sub-division, and Pargana Handweh of the Sadar Sub-division.	The Bengali year begins on the 1st of *Baisakh* (=about the middle of April). The corresponding calendar year can be obtained by adding 593 to the Bengali year up to about the middle of *Poush* and 594 after that.	The present Bengali year (July, 1911) is 1318. The Bengali year prevails in Parganas Bagri, Chandrakona, Brahmanbhum, Barda Chetua, and Khariji Mandalghat of the Midnapore District.
Calendar ...	Damni-i-koh in the Sonthal Parganas.	Begins on 1st of January.	
Fasli	Patna Division, Palamau, part of Purnea, Godda Sub-division, Pargana Handweh of the Sadar Sub-division of the Sonthal Parganas, Monghyr, and Bhagalpur.	The *Fasli* year commences on the 1st of *Aswin*. For obtaining the corresponding calendar year add 592 to the *Fasli* year from 1st of *Aswin* up to the middle of *Poush*, and 593 after that.	The present *Fasli* year (July, 1911) is 1318. In some parts of Monghyr, the *Fasli* year commences on the 1st of *Ashar*, *i.e.*, with the sowing of the *Bhadoi* crop.

APPENDIX IV.—(*Continued.*)

English.	Hindi.	Bengali.
Fallow, old ...	Parti kadim ...	Puratun patit.
„ for part of the year	Chaumas ...	
Farm ...	Thika ...	Ijara.
Forfeiture ...	Zabti ...	Sampatti danda.
„ Relief against	Zabti ka iláj ...	Sampatti dander pratikár.
Full discharge ...	Fárighkhati ...	Fárkhati.
Holding ...	Jôt ...	Jôt.
„ Abstract of particulars of	Khatian ...	Khatian.
„ at fixed rates ...	Sharah mukarrar par rakhi hui jôt.	Mukarrarí hári bhumi bhog.
„ Conditions of ...	Jôt rakhne ki sharten ..	Jotbhoger niyam.
„ Occupancy ...	Hak dakhal ki jôt ..	Dakhali svatva prápta jôt.
Homesteads ...	Basgit zamin ...	Bastu bhumi.
Improvement ...	Zamin ki liakat barháná	Utkarsha sádhana.
„ Compensation for	Liákat barháni ki liye taláfi.	Utkarsha sádhana nimitta kshati púran.
„ Registration of	Liákat barháni ki registri	Utkarsha sádhana registari karana.
„ Right to make	Zamin ki liákat barháwká hak.	Utkarsha sádhana karibar svatva.
Illegal cesses ...	Be áini abwáb* ...	Ain biruddha abwáb.
„ „ Exaction of	Khilafáin abwáb ká lena	Ain biruddha abwáb anyáya kariya lawa.
„ interferences ...	Áin ke khiláf da standázi	Beainimat hastakshep karan.
Incumbrance ...	Dain ...	Dáya.
„ Avoidance of	Dain rad karna ...	Dáya asiddha karna.
„ Instrument creating	Dain paidá karne wáli... dastávez.	Dáya srishtikári nidarsan patra.
Interest ...	Hak ...	Svártha.
„ Protected ...	Bacháe hue hak ...	Sanrakshita svártha.
Land ...	Zamin ...	Bhúmi ba jami.
„ Acquisition of ...	Zamin hasil karna ...	Bhúmi grahan.
„ Dearah ...	Dearah zamin ...	Diarah bhúmi.
„ Khamar† ...	Khamar zamin ...	Khamar bhúmi.
„ Determination of private	Nij dakhli zamin ki tajviz	Nij jami nirnaya karan.
„ Proprietor's private	Malik ki nij dakhli zamin	Bhúsvámir nij jami.
„ Waste ...	Parti zamin or uftada zamin.	Patit bhúmi.

* Abwab, plural of bab, a gate, door, or way—now cesses imposed subsequently to the fixing of the *assul* standard of assessment. The word indicates the means by which alone it was thought a door was opened to increase the *assul*.

† Literally a threshing floor; lands for which money-rent was not paid, but the produce was divided on the threshing floor—contradistinguished from raiyati land.

APPENDIX IV.—(*Continued.*)

English.	Hindi.	Bengali.
Landlord ...	Zamindar ...	Bhúmyákdhikári.
„ Inferior ...	Zamindar-i-matahat ...	Adhastana bhúmyádhikári.
„ Superior ...	Zamindar-i-mafauk ...	Uchchatana bhúmyádhikári.
Lease ...	Patta ...	Páttá.
Lease, Expiration of ...	Patta ki miyad khatam hona.	Páttár miyáda atita.
Lessor ...	Patta dena wala ...	Pattádátá.
Limitation ...	Tamadi ...	Miyáda bá tamádi.
Manager ...	Manager ...	Kariyádhyaksha.
„ Common ...	Manager ijmali ...	Sádháran karjyádhyaksha.
Measurement ...	Paimaish ...	Bhúmi máp.
„ Standard of	Paimaish ka paimanah	Máper niyam.
Mortgagee ...	Rihn rakhne wala ...	Bandhakagrahitá.
Occupation ...	Dakhal ...	Dakhal.
„ Admitted to	Zamin par dakhal paya	Dakhalprápta.
Owner ...	Malik ...	Malik.
Payment ...	Ada karna ...	Táká dewa.
„ Appropriation of	Ada kiyi-hui malguzari ko hisab men láná.	Táká je rupe jama dite hoibe.
„ of rent ...	Malguzari ada karna ...	Khajaná dewa.
Presumption ...	Kiyas ...	Anumán.
Produce ...	Paidawar ya jins ...	Fasal.
„ Appraisement of	Paidawar ki kankut ...	Fasal jáchái.
„ Division of ...	Batai ...	Fasal bibhága.
Proprietor ...	Malik ...	Bhusvámi.
„ Registered ...	Registree kiye hue malik	Registari kará bhúmyadhikári vá bhusvámi.
Provisions ...	Kaide ...	Bidhán.
„ Miscellaneous	Mutfarrik kaide ...	Bibidh bidhán.
Raiyat ...	Raiyat ...	Ráiyat.
„ holding at fixed rate.	Sharah mukarrar par zamin rakhne wala raiyat.	Mukarrari háre je ráiyaterá bhúmi bhóg kare.
„ Inferior ...	Raiyat-matahat ...	Adhastana ráiyat.
„ Non-occupancy...	Ghair dakhalkar raiyat	Dakhali svatva súnya ráiyat.
„ Occupancy ...	Dakhalkar raiyat ...	Dakhali svatva bisishta raiyat.
„ Resident cultivator.	Dehi Kashtkar ...	Khudkast.
„ Non-resideat cultivator.	Pahi Kashtkar ...	Paikast.
„ Head raiyat ...	Jeth raiyat ...	Mandel.
„ Settled ...	Kaimi raiyat ...	Sthitibán ráiyat.
„ Under ...	* Shikmi ya kolaiti raiyat	Korfa ráiyat.

APPENDIX IV.—(*Continued.*)

English.	Hindi.	Bengali.
Rate ...	Sharah nirikh ...	Hár.
„ Prevailing ...	Sharah mamuli ya maruwaj.	Prachalita hár.
Receipts ...	Rasid	Dákhila.
„ Effect of ...	Rasid ka asar ...	Dákhilár phal,
„ Forms of ...	Rasid ka namuna ya naksha.	Dákhilár pát.
„ Withholding ...	Rasid na dena ...	Dákhilá ná dewa.
Record ...	Ruedad ...	Likhan.
„ Entries in ...	Ruedad ki madain ...	Likhaner lekhá.
„ of rights ...	Ruedad hakuk ...	Svatver likhan.
Record-of-rights, Publication of.	Hakuk ke ruedad ka mushtahir karna.	Likhan prakásh karan.
Register ...	Register ...	Register.
„ of suits ...	Mukaddama ki register	Mukaddamar register.
„ Field ...	Khasra ...	Khasra or chitha.
Rent ...	Malguzari ...	Khájaná.
„ Alteration of ...	Malguzari ka badalná ..	Khájaná paribartan.
„ Arrears of ...	Baki malguzari ...	Báki khájaná.
„ Bar to recovery of	Malguzur ki wasuli ki kaid.	Khájaná ádáy karite ná para.
„ Commutation of ...	Bhaoli ki jagah nagdi kaim karna.	Khájaná nagdán karana.
„ Deposit of ...	Malguzariamánatrakhna	Khájaná amánat.
„ Enhancement of ...	Malguzari ka barháná...	Khájaná briddhi.
„ Fair and equitable	Wajib aur munasib malguzari.	Upajukta o nyájya khájaná.
„ free ...	Lakhiraj ...	Lakhiraj.
„ Fixity of ...	Malguzari ka mukarrar hona.	Khájaná mukarrar thaka
„ Initial ...	Shuru ki malguzari ...	Parthamá sthaliya khájaná.
„ Instalments of ...	Malguzari ki kist ...	Khájanár kisti.
„ Limit of ...	Malguzari ki had ...	
„ payable in kind ...	† Bhaoli malguzari ...	Sasya rupe deya khájaná
„ Produce ...	Malguzari jins men ...	Fasli ba bháoli khájaná.
„ Reduction of ...	Malguzari ka ghatáná	Khájaná kamána.
„ Settlement of ...	Malguzari ka bandobast karna.	Khájanár bandobast.
Revenue ...	Malguzari ...	Rájasva.
„ free ...	Lakhiraj ...	Lakhiraj.

* Shikmi: this word is, in Gaya, applied to land the rent or rate of rent of which has not been altered since the Permanent Settlement, though a cess may have been charged for growth of a special crop, such as opium, the cess being only charged when the special crop is grown.

† Said to be corruption of bahuliya, abundance.

APPENDIX IV.—(*Continued.*)

English.	Hindi.	Bengali.
Revenue officer ...	Afsar mál ...	Rájasva karmáchári.
Rights ...	Hak ...	Svatva.
„ and liabilities ...	Hakuk-o-jawabdihi ...	Svatva o dáya.
„ Devolution of occupancy.	Hak dakhal ka dusre ko pahuncha.	Mrityú hoile dákhal svatva bartána.
„ Forest ...	Bankar ...	Bankar svatva.
„ of fishery ...	Jalkar ...	Jalkar.
„ Incident of occupancy	Hak dakhal ke mutalliq batain.	Dakhali svatver anushanga.
„ Occupancy ...	Hak dakhal ...	Dákhali svatva.
„ of pasturage ...	Charagah ka hak ...	Gocháran svatva.
„ Record-of ...	Ruedad hakuk ...	Svatver likhan.
Rules and presumptions	Kaide o kiyás ...	Vidhi o anumána.
Rules under Act ...	Act ke mutalik kaede ...	E' áin matá vidhi.
Sale ...	Bikri ya nilam ...	Bikray va nilam.
„ Liability to ...	Bikri ke laik hona ...	Nilámá Jogyatá.
„ proclamation ...	Nilami ishtihar ...	Nilamer ghoshaná patra.
„ To set aside ...	Nilam rad karna ...	Nílam anyathá karana.
Settlement ...	Bandobast ...	Bandobast.
„ Permanent ...	Davami bandobast ...	Chirasthâyi bandobast.
Staple food-crops ...	Khane ki jins ki ám faslen. ...	Pradhán utpádya khádya sasya.
Subletting ...	Shikmi patta dena ...	Korfabili karana.
Succession ...	Kaim makam hona ya warsa pana.	Uuttarádhikára.
Surrender ...	Istifá dena ...	Istafá.
Survey ...	Paimaish ...	Jarípa.
„ *Cadastral* ...	Kistwar paimaish ...	Kshetrabant jarip
Temporarily-settled districts.	Miadi bandobasti zile ...	Je jiláy kiyat kálín bandobasta tháke.
Tenancy ...	Jôt ya zamin rakhna ...	Prajá svatva.
„ Incidents of ...	Zamin rakhne ki nisbat baten.	Prajá svatver anushanga.
„ Sub-division of	Jôt ki taksim ...	Prajá svatver bibhág.
Tenants ...	Asami ...	Prajá.
„ Classes of ...	Asami ki kismen ...	Prajáder sreni.
„ Inferior ...	Asami matahat ...	Adhastana prajá.
„ Under ...	Shikmi asami ...	Petáo prajá.
Tenure ...	Darmiani hak ...	Madhya svatva.
„ holder ...	Darmiani hakdar ...	Madhya svatvadhikári,
„ Incidents of ...	Darmini hak ke mutalik baten.	Madhya svatver anushanga.
„ Permanent ...	Davami hak darmiani ...	Káemi madhya svatva.
„ Sale of ...	Hak darmiani ka nilám	Madhya svatver niláma.
„ Service ...	Chakran zamin ...	Chákrán taluka.
„ Transfer of ...	Hak darminni ka intikal	Madhya svatver hastántara.

APPENDIX IV.—(*Continued.*)

English.	Hindi.	Bengali.
Tenure Transmission of	Hak darmiani ka intikal	Madhya svatver uttarádhikara.
Use of land ...	Zamin ka istimal ...	Bhúmi byabahár.
Utbandi ...	Utbandi ...	Uthbandi.
To violate conditions ...	Sharton ka torna ...	Niyam langhan karan.

Some Terms used in Zemindari Accounts.

English.	Hindi.	Bengali.
Field register ...	Khasra ...	Khasra or chitha.
Abstract of particulars of holding.	Khatián ...	Khatian.
Record of interests of proprietors.	Khewat ...	Khebat.
Record of the annual rent demand or rent-roll.	Jamabandi or hastabood*	Jamabandi.
Record of daily receipts from tenants.	Siyaha ...	Seha.
Abstract of síaha and jammabandi.	Arsattá ...	Thoka.
Record showing demand, realization, and balance.	Jamâ wasilbaki ...	Bakijai.
Abstract of receipt and disbursements.	Jamma kharach ...	Jammakharach.
Record showing the name of each tenant, the total area of holdings, and rates of rent.	Terij assimwar ...	Dagbili khatian.
Abstract of village area and accounts.	Goshwarah ...	
Village expenses ...	Dih kharcha ...	Dihi kharcha.
Miscellaneous receipts, such as fisheries, &c.†	Sair ...	Sair.
Proprietor's private land	Zerait, sir, or kamat‡ ...	Sir, khamár, or nij-jote.

* Hastabood, literally hast-o-bud, what "is and was," used in Behar for jamabandi also general inquiry into value of land before harvest.

† Literally what moves.

‡ Zerait, cultivation used for land cultivated under indigo by thikadars in Behar, and thus often confounded with *nij* land.

APPENDIX IV.—(*Concluded.*)

English.	Hindi.	Bengali.
	Free Grants.	
Rent-free grants ...	Brit or jaigir* ...	Jaigir.
" for the worship of Brahma.	Brahmottar ...	Brahmottar.
" for the worship of Bishnu.	Bishunprit ...	Bishunprit.
" for the worship of Siva.	Sivattar ...	Sibottor.
" dedicated to Pirs.	Pirottar ...	Pirottar.
" for ghatwals...	Ghatwali ...	Ghatwali.
" made to village watchmen.	Goraiti jaigir ...	Chowkidari chákrán.
" made to the family of a man killed in the Rajah's service.	Marwat ...	(*Nil.*)
Grants of land at reduced rent.	Menhai or mááfi ...	Ayema.†
Assigned by a Rajah for maintenance to a younger son or brother.	Khorish ...	"
Royal grants in perpetuity.	Altamgah ...	Altamgah.

* Birt, corruption of vriti, a small plot of land for a house generally with some ground round it, often given to Brahmans.

† Literally learned men, originally a grant to religious Mahomedans.

APPENDIX IV.

(*Second Part*).

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA.

Preliminary remarks.

(1) Mr. Field says, on the subject of tenures and under-tenures,—

I have never met with a complete list of these tenures or a description of their incidents, and, even in the district in which any particular tenure is most usual, I have in vain endeavoured to get an accurate description of its origin and peculiarities. During a considerable judicial experience, I have never had a case before me in which it was attempted to prove the *custom* of any particular tenure. .....Inheritability, transferability, liability to sale for arrears of rent, and non-liability to enhancement of rent are, it may be safely said, the sole incidents, one or more of which now belong to all tenures in Bengal, by whatever names they may be known.[1]

(2) It is to be remembered that the nature and incidents of tenures and *raiyati* holdings which are known by the same vernacular names often differ in different parts of the country.

(3) The descriptions given in the following pages of tenures, under-tenures and *raiyati* holdings are, for the most part, taken from the reports of Settlement-officers which were compiled after local inquiry on the ground. The incidents of tenures and holdings recorded by Settlement-officers in their records-of-rights, where records have been prepared under Chapter X. of the Bengal Tenancy Act, must be presumed to be correct until the contrary is proved (see section 103B, *ante*); and in areas, not under settlement of land-revenue, of which records-of-rights have been prepared, decisions of Revenue-officers regarding disputed entries in the record-of-rights of incidents of tenures and holdings have the force and effect of decrees of the Civil Court in suits between the parties (see sections 106 and 107, *ante*).

(4) The annexed list does not purport to contain a *complete* enumeration of tenures, under-tenures and holdings.

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[1] Field's Regulations, p. 42, foot-note.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
1	*Abadkars* ...	See No. 69, *post*.
2	*Adhiars* ...	See Nos. 47, 48, *post*.
3	*Agat taluk* ...	See No. 117, *post*.
4	*Aghor-batai* ...	See No. 105, *post*.
5	*Aima* ...	"The *aimas* of Midnapore are creations subsequent to the Permanent Settlement. The estate of Balrampur, in which they exist, was purchased by Government in 1838 at a sale for arrears of revenue. In 1875 the estate came under re-settlement. The *aimadars* who would not agree to the terms offered them by the Settlement-officer were then set aside, and the settlement was made with the tenants immediately below them. Litigation ensued, and the *aimadars* were declared by the Civil Court to be *raiyats* having a right of occupancy. The settlement was then concluded with the *aimadars*, leaving them to settle with their under-*raiyats*. The rights then accorded with the sanction of the Civil Court have been ultimately agreed to, but it cannot be denied that they are less than the privileges claimed, and that the settlement is the reverse of acceptable to those most affected by it." [1] These *aimadars* would now probably be classed as tenure-holders under the Bengal Tenancy Act.
6	*Altumgha* ...	The word *altumgha*, says Galloway, is a compound of *al*, a crimson colour, and *tumgha*, a seal, and signifies the royal seal.[2] He continues "The meaning which the British Government attaches to an *altumgha* grant is, that it is a royal grant, but only in *perpetuity* to the grantee and his heirs, but that it is a transferable and perpetual *lakhiraji* or rent-free tenure. It is certain, however, that it by no means necessarily implies [originally] either *permanence* or *exemption from revenue*, or *right of transfer*.[3] An *altumgha* would now be an estate under section 3, clause (*1*), of the Bengal Tenancy Act (*ante*).
	Arazi ...	See No. 80, *post*.

[1] Bengal Administration Report, 1901-02, p. 96

[2] Galloway's India, p. 72.

[3] *Ibid*.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
7	*Assamiwar*,... *raiyati, tinkathiapatti dehai* (indigo.)	"Indigo is grown by *raiyats* either under agreement (*sattas*) or without agreement (*khushki*). Mr. C. H. Macpherson thus describes the former :— '*Asamiwar, raiyati, tinkathia patti dehai*,—all these terms are used to describe a condition of things whereby a *raiyat* (in a village leased to an indigo factory) enters into an agreement to grow indigo on a portion of his holding, he being paid for the same at the rate of Rs. 13 to Rs. 14 per *bigha* of 6½ *haths laggi* [*i.e.*, a measuring rod about 9 ft. 9 in. long]. and proportionately more when the *bigha* is bigger. The *raiyat* prepares the land. It is sown, and the crop is cut and carted, by the factory. The money payable to the *raiyat* usually goes as a set-off against rent payable by him to the factory.' "[1]
8	*Ayma*	Galloway thought *ayma* was the plural of *imaum*, and that, "if so, it was probably nothing more originally than the grant of a small living to maintain a priest, or *imaum*, at the neighbouring *mosque*, to preside over the people at prayers ; the person who guides the people at their public devotion being the *imaum*, or *leader* for the occasion. Or it may have taken its name from the donor, the sovereign, in his capacity of *imaum*."[2] The Bengal Financier, Grant, observes " *ayma* is the popular general term for all charitable or religious donations made by the sovereign to Mahomedans in Hindustan,—and, technically, in forms of *sunnud*, as well as of the exchequer, always more particularly distinguished by the words *altumgha* or *muddud maash*."[3] *Ayma* is supposed, says Galloway, to be a regular form of grant, conveying from the Crown a free and perpetual transferable title.[4] A revenue-free grant is now an "estate"—see section 3, clause (1), *ante*.
9	*Bandobasti taluq*	See No. 117, *post*.
10	*Batai*	See No. 105, *post*.

[1] Muzaffarpur Settlement Report, page 346, para. 886.
[2] Galloway's India, p. 73.
[3] *Ibid*, p. 73.
[4] *Ibid*, page 74.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
11	*Basyafti* ...	The Settlement-officer of Orissa says— "When the British took over the Province of Orissa, all persons claiming to hold property *lakhiraj*, or free of payment of revenue, were invited to register their claims in the office of the Collector, with a view to an investigation of their title under section 18 of Regulation XII. of 1805. Over 150,000 claims were registered; but there was no machinery capable of dealing with them, and it was not until the Settlement of 1838 that systematic proceedings began to be taken under the Resumption Regulations, XII. of 1805, II of 1819 and XIV. of 1825."[1] Holders of lands claimed revenue-free on invalid titles were allowed, in 1841, the privilege of holding at half rates,[2] and the revenue of all such holdings having an area of less than 75 acres was made payable through the *zamindars* of the estates in which the lands lay.[3] "The tenures [thus] assessed at half rates are called *adhajama* or *nisfi basyafti*[4] or vulgarly simply *basyafti*; those paying full rents are called *pura jama* (full rent) or *kamil* (perfect, or complete) *basyafti*, and the holders are commonly described as *kamildars*."[5] "The *basyaftidars* are for the most part Brahmans and look upon themselves as proprietors rather than as tenants, and indeed to this day often describe themselves as *lakhirajdars*. They can sell the whole or any part of their property, can plant trees, build houses, and exercise all ordinary proprietary rights; but, without the *zamindar's* consent, they cannot divide the rent or the liability for it; and many *zamindars* exact a mutation fee before recognising a new purchaser. Compensation for acquisition of the land for public purposes Present position of *basyaftidars*.

[1] Orissa Settlement Report, Vol. I, page 312, para. 313.
[2] *Ibid.*
[3] *Ibid*, page 214, para. 314.
[4] The two names mean the same, *i.e.*, "half-rent resumed," the former being the Hindi and the latter the Persian name.—*See* Orissa Settlement Report, Vol. I, page 214, foot-note.
[5] Orissa Settlement Report, Vol. I., page 214, para. 314.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
11	*Basyafti*—(contd.)	has hitherto been paid only to the *basyaftidar* and not to the *samindar*."[1] The incidents of the *kharida jamabandi*, the *basyafti* and the *tanki* tenures are thus summed up by the Settlement officer:— Incidents of these tenures. "(1) They are heritable. (2) They are transferable. (3) They are divisible, but no division of rent is binding on the landlord without his consent. (4) The tenure-holders have the same rights over waste land included in their tenures as *samindars* have in the waste land of their estates—that is, a full right to the jungle produce and to the profits of reclaimed lands. Any lands brought under cultivation in the course of the Settlement are of course liable to assessment at next Settlement. (5) The rent payable is fixed for the term of settlement. (6) In default of payment the tenure may be brought to sale under section 105, Act X. of 1859. The balance of the purchase-money, after paying the arrear rent, goes to the defaulter. (7) These tenures do not on purchase by the *samindar* or other landlord, merge in the superior right; but, by the custom of the country, survive and are not rendered void by the sale of the *samindari*."[2]
12	*Bhatottur* ...	From *bhaat*, a class of brahmins; meaning a maintenance for *bhaat* brahmins. A Hindu grant.[3] If the grant was revenue-free, it would, under the Bengal Tenancy Act, be an estate; if only held rent-free from a proprietor, it would be a tenure or holding.
13	*Bhogottur* ...	From *bhoga*, enjoyment, possession, and *oottur*, fit for, belonging to: a maintenance to any person. A Hindu grant.[4]

[1] Orissa Settlement Report, Vol. I., p. 214, para. 315.
[2] *Ibid*, page 215, para. 317.
[3] Galloway's India, page 77.
[4] *Ibid.*

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
14	*Bhuinhari* ...	"In the Chota Nagpur Division there are special tenures, called *bhuinhari* which are liable to rent, if proof of the payment of rent can be adduced, and to services of various kinds such as burden-carrying, supplying free labour for building purposes, &c. The *bhuinhars* seem to have been the original reclaimers of the soil. Friction having arisen from alleged encroachments by landlords on *bhuinhari* lands, the *bhuinhars* claimed half the lands of the village rent-free, and, on opposition from the landlords, committed riots which led to the passing of the Chota Nagpur Tenures Act, II. (B.C.) of 1869. The rights of the *bhuinhari* tenure-holders were fixed by the *Bhuinhari* Commissioners and recorded in the official registers. In the settlement of the estate of the Maharaja of Chota Nagpur, he was recorded as having a right to predial services, gifts and *bethbegari* (free labour) from the holders of the *bhuinhari* tenures, but similar rights of the superior holders under the Maharaja over these tenure-holders were commuted into cash, and the amounts so ascertained were included in the rental The *bhuinhari* tenures are now recognised as transferable."[1] See also No. 62, *post*.
15	*Birt* ...	See No. 80, *post*.
16	*Bishnottur* ...	(*Vishnoottur*, from *Vishnoo* and *oottur*) *i.e.*, a grant of land for the worship of Vishnoo. A Hindu grant.[2] If the grant was revenue-free, it would, under the Bengal Tenancy Act, be an estate; if only held rent-free from a proprietor, it would be a tenure or holding.
17	*Brohmottur* ...	A compound of *bruhm*, a brahmin, and *ootur*, fit for, belonging to: a grant of land to a brahmin. A Hindu grant.[3] If the grant was revenue-free, it would, under the Bengal Tenancy Act, be an "estate"; if it was only a grant of land made by a *zamindar* and held rent-free, it would be a tenure or holding.
18	*Chakath* ...	See No 83, *post*.

[1] Bengal Administration Report, 1901-02, page 98.
[2] Galloway's India, page 77.
[3] *Ibid.*

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
19	*Chakran* ...	Service lands, from *chakar*, a servant. This grant may be by a Hindu or Moslem.[1] See also No. 21, *post*, and No. 110, *post*.
20	*Chandinadars*...	"Tenants other than the '*khushbash*' or respectable *thani* and resident *raiyats* have always paid rent for their homestead lands. In the case of the cultivating classes such lands were generally part of the *pahi* holding; but the shopkeepers, artisans, and labouring classes, who, having no arable land in the village, pay rent for homestead lands only, are called *chandinadars*, and their tenure *chandina*. *Pahi raiyats* also, who, having their home in one village, hold also house or homestead in other, are sometimes known as *chandinadars* of the latter village. The term originally implied inferiority, as on this class fell the obligation of supplying forced labour or postage when required by any Government official; but, this obligation having fallen into disuse, the unpopularity of the term has passed away, and the word *chandina* has come to be used for all homestead land paying rent separately from the arable lands. At the last settlement *chandinadars* were given leases securing to them fixity of rent for the term of settlement, and the incidents of the tenure do not materially differ from those of *thani raiyats*, except that they are governed by the Contract Act and not by Act X. of 1859. *Chandina* tenancies have to a great extent merged in *pahi*, and on the other hand new *chandina* tenancies have been recognised, especially in *patnas* or villages consisting solely of homestead, and in the suburbs of towns."[2] *Chandina* tenants are not *raiyats* within the meaning of section 5 (*ante*). See also Nos. 97 and 98, *post*.
21	*Chaukidari chakran.*	"Before the advent of the British, the *Zamindars* not only defended the country against foreign enemies with armed retainers, but also administered the law and maintained peace and order with a large force of rural police known as *thanadars* or *phanridars*, *chaukidars*, *paiks*, &c., who helped in protecting the property of the *zamindar*, in col-

[1] Galloway's India, page 77.
[2] Orissa Settlement Report, Vol. I. page 222, para. 327.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
21	*Chaukidari chakran*—(contd.)	lecting his revenue, and in doing other services personal to the *zamindar*. All these officers were at that time servants of the *zamindar*, appointed and removed by him, and often remunerated by grants of land rent-free or at a quit-rent in consideration of their services. The lands so enjoyed were called *chakran*, or service, lands. The effect of the Decennial Settlement was to divide them into two classes—(*1*) *thanadari* lands, which, by Regulation I. of 1793, section 8, clause 4, were made resumable by the Government; (*2*) all other *chakran* lands, which, by Regulation VIII. of 1793, section 41, were, whether held by public officers or by private servants in lieu of wages to be annexed to the *malgusari* lands and declared responsible for the public revenue assessed on the whole estate. A service tenure created for the performance of services, private or personal, to the *zamindar*, may be resumed by him when the services are no longer required, or when the grantee of the tenure refuses to perform them. A *zamindar* is, however, not entitled to resume when the grant is for services of a public nature. The duty of protection having now entirely devolved on Government, the policy at present is to resume and assess all such lands as are resumable, and, accordingly, they are being converted—usually by amicable arrangement—into ordinary tenures. The *chaukidari chakran* tenures are described and dealt with in Act VI. (B.C.) of 1870, and land ceases to be *chaukidari chakran* when Government transfers it to the zamindar. The *thanadari*, or *phanridari*, tenures of Hooghly have been dealt with under special rules."[1] See also No. 110, *post*.
22	*Cheraghi* ...	From *cheragh*, a lamp; to maintain lamps burnt at the shrines of saints. (Inst. Tim., *roshanee*). A Moslem grant.[2]
23	*Chukanidars* ...	See Nos. 47, 48, *post*.
24	*Danabandi* ...	See No. 105, *post*.
25	*Dar taluks* ...	See No. 117, *post*.
26	*Dar agat taluks*.	See No. 117, *post*.

[1] Bengal Administration Report, 1901-02, page 98.
[2] Galloway's India, page 77.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
27	*Dar-chukanidars*	See Nos. 47, 48, *post*.
28	*Dar-itmamdars.*	See No. 43, *post*.
29	*Darosatnim howla*	See No. 40, *post*.
30	" " " *raiyat*	See No. 40, *post*.
31	*Dar nim osat taluk.*	See No. 40, *post*.
32	*Dar patni osat taluk.*	See No. 40, *post*.
33	*Debottur* ...	From *deba*, a god, and *oottur*, fit for, belonging to: a grant of land for the expense of a deity. A Hindu grant.[1]
34	*Dhulibhag* ...	See No. 105, *post*.
35	*Enam* ...	(*Lit.* gift, present), land given by *samindars* or *amils* as a favour.[2] If now recognised as revenue-free land, it would, under the Bengal Tenancy Act, be an estate; if only rent-free it may be a tenure or a holding.
36	*Etmam* ...	See No. 40, *post*.
37	*Fakiran* ...	From *fakir*, a mendicant (Mahomedan law, *fukra*, to maintain the poor). A Moslem grant.[3]
38	*Ghatwali* ...	"*Ghatwali* tenures exist in the districts of Birbhum, Bankura. Burdwan, Bhagalpur, Monghyr, Manbhoom, Purnea, Patna and the Sonthal Parganas. These tenures may be generally divided into two classes, that is (*1*) tenures granted for a species of military service to be rendered by guarding the *ghats* or passes on the western frontiers of Bengal, and (*2*) tenures granted on condition of rendering police service. A small quit-rent is generally paid by the *ghatwals*, through the *samindar*, in addition to the service rendered. Of recent years extensive resumptions have been made of these tenures in the districts of Birbhum and Bankura on an amicable basis, the *ghatwals* being released from rendering service, and recognized as subordinate tenants with rights of occupancy, while the lands have been assessed to revenue and settled with the *samindars*. The Birbhum tenures have formed the subject of legislation (Regulation XXIX. of 1814 and Act V. of 1859)."[4] See notes to section 181, *ante*, and see also No. 110, *post*.

[1] Galloway's India, page 78. [2] *Ibid*, page 76.
[3] *Ibid*, page 77. [4] Bengal Administration Report, 1901-02, p. 98.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
39	*Hal hasila* ...	"A peculiar form of cultivating tenure, known as *hal hasila*, prevails over a considerable portion of the Bhagalpur Division. The tenant pays rent for the lands cultivated by him, according to the nature of the crops grown on them, and for the fallow lands at the rate which he paid for the same land in the previous year, or according to the rate for the fallow land specified in his lease, when there is a lease and a condition to that effect."[1] *Hal hasili* lands are, under the Bengal Tenancy Act, treated as ordinary *raiyati* lands, in which occupancy-rights may be acquired in the ordinary way
40	*Howla* ...	The Rent Commission made the following remarks on the subject of *howladars* :— "In Backergunge there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor *zamindar*. These interests are—(1) *taluk*, (2) *zimba taluk*, (3) *shamilat taluk*, (4) *osat taluk*, (5) *nim osat taluk*, (6) *howla*, (7) *osat howla*, (8) *nim osat howla*, (9) *nim howla*, (10) *osat nim howla*, (11) *miras karsha*, (12) *kaim karsha*, (13) *karshadar* or *raiyat*. The origin of most of the *taluks* and *howlas* appears to have been a grant of a considerable tract of waste land, upon favourable terms as to rent, to someone who undertook to bring it under cultivation. The grantee reclaimed portions, and sublet portions to smaller reclaiming tenants; or perhaps sublet the whole, if he could find tenants to reclaim it. These sub-lessees sublet again; and the sub-letting was carried still lower, until the whole tract was divided into holdings of a manageable size for single families. The number of grades doubtless varied with the size of the tract originally leased, and with the denseness of the population in the particular locality. Not uncommonly those who had reclaimed land sublet it, when the demand for land increased; or a person, who had taken enough for two or three holdings, reclaimed and retained enough for one, and sub-let the remainder. It is easy to imagine the intricacy of interests which must have been the result of such

[1] Bengal Administration Report page 99, para. 202.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
40	*Howla*—(contd.)	a system. Sometimes the *zamindar's* grantee embarked a little capital, making advances to needy *raiyats*, forced out by the pressure of population from densely inhabited localities, and thus enabling them to buy ploughs and cattle and seed, and build homesteads. This was probably necessary at starting a new settlement. As matters progressed, and if the venture was successful, new settlers had to pay a *salami* or fine to the grantee before he assigned them lots in his grant. In many instances the chief capital taken to the work of reclamation was the labour of those who accompanied the grantee as a leader in whom they had confidence. Where the waste has been wholly reclaimed and the land fully occupied, we find persons occupying the double position of landlord and tenant, paying rent for an entire lot, cultivating part, and subletting part to persons who perhaps again repeat the process. . . . . The *howla* interest has come by custom to be regarded as heritable, transferable, and permanent so long as the rent is paid, but subject to enhancement."[1] "The following is a gradation list of the tenures and under-tenures found in the Pargana Dakhin Shahbazpur (in the Backergunge District):— I.—*Taluk.* II.—*Nim taluk.* III.—*Osat taluk.* IV.—*Dar patni osat taluk.* V.—*Nim osat taluk.* VI.—*Dar nim osat taluk.* VII.—*Miras ijara.* VIII.—*Etmam.* IX.—*Mudafat.* X.—*Howla* or *jimba.* XI.—*Osat howla.* XII.—*Nim howla.* XIII.—*Osat nim howla.* XIV.—*Dar osat nim howla.* XV.—*Raiyat* or *jotedar.* XVI.—*Kole raiyat, nim raiyat, jer raiyat &c.* XVII.—*Osat nim raiyat.* XVIII.—*Dar osat nim raiyat.*"[2] "A *raiyat* in Dakhin Shahbazpur [in Backergunge] is not necessarily the actual cultivator of land. There are sometimes two or three grades of under-*raiyats* between him and the actual cultivator.

[1] Rent Commission's Report, para. 15, *Gazette*, page 13.
[2] Backergunge Settlement Report, page 15, para. 63.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
40	*Howla*—(contd.)	These under-*raiyats* acquire right of occupancy, and their interests are, by custom, transferable. There is therefore very little difference between a *raiyati* holding and a tenure or under-tenure in Dakhin Shahbazpur, except in name. Like a tenure, a *raiyati* holding in Dakhin Shahbazpur is heritable, transferable, and saleable in execution of decrees; and a *raiyat* in Dakhin Shahbazpur often holds a larger area and pays a larger rent than many tenure and under-tenure holders."[1] "The commonest name for a *raiyat's raiyat* or under-*raiyat* is '*korfa*.' An under-*raiyat* paying rent in kind is called "*bargait*." Produce rent is, however, very rare in Dakhin Shahbazpur."[2] It cannot be assumed that the description of the nature and incidents of *howlas* and other tenures as given by the Settlement-officer of Dakhin Shahbazpur holds good in respect of all tenures and under-tenures known by the same names in Backergunge generally and in other districts of Bengal. But the description given is probably substantially accurate for other parts also. *Howlas* and *nim howlas* are permanent, transferable and heritable, but liable to enhancement of rent. Instances have, however, been found in which the holdings of the under-*raiyats* of the second and the third degree were caused to be sold in execution of decrees, and purchased by the proprietors.[3] The *howlas* and *nim howlas* of Backergunge have been held by the High Court to be permanent hereditary tenures.[4]
41	*Inamat* ...	See No. 80, *post*.
42	*Istimrari* ...	See No. 81, *post*.
43	*Itmamdars* and *dar-itmamdars*.	An *itmam* (originally *ihtimam*) meaning "entrusted to," is ordinarily an under-tenure subordinate to a *taluk*. In the permanently-settled portions of Chittagong an *itmam* is transferable, heritable, and held at a fixed rate of rent in perpetuity.[5]

[1] Backergunge Settlement Report, page 17, para. 77.
[2] *Ibid*, page 18, para. 82.
[3] *Ibid*, page 17, para. 81.
[4] *Huromohun Mookerjee* v. *Ranee Lalun Monee Dasee* [1864], 1 W. R., 5; *Juggut Chunder Roy* v. *Ramnarain Bhuttucharjee* [1864], 1 W. R., 126.
[5] Chittagong Settlement Report, page 27, para. 79.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
43	*Itmamdars* and *dar-itmamdars* —(contd.)	*Dar-itmamdars* in the permanently-settled estates of Chittagong bear same relation to *itmamdars* that the latter do to the *talukdars*. Where lower grades of sub-infeudation exist the same remark applies.[1] In the *Noabad taluks*, as *talukdars* had no power to grant leases at rents fixed beyond the term of the settlement made with them by Government, *itmams* and *dar-itmams* created by them are not held at rates fixed in perpetuity. Such *itmams* and *dar-itmams* are permanent tenures, under-tenures or *raiyati* holdings, according as they fall under one or other of these terms, as defined in the Bengal Tenancy Act, and are not held at rates fixed in perpetuity.
44	*Jagir* ...	The word *jagir* is supposed to be derived from *jah*, a place, and *geruftun*, to lay hold of. A *jagir* "is known to be merely a life-rent tenure, but it is stated to convey a rent-free title. A *jagir*, when given in land, is known, in the Mahomedan law, by the name of *anktaa*, from *kutta*, to cut; signifying a portion cut off for a particular purpose. *Jagir* may be said to be a military tenure."[2] Galloway traces its origin to Timur, whose practice it was to give assignments of revenue or *yurleegh* to his *omrah* and *mingbaushis* (officers of horse, who received sixty times the pay of a trooper.)[3] A *jagir* which consists of revenue-free land is an estate—see section 3, clause (*1*), *ante*, page 47. A *jagir* consisting of a grant of rent-free land made by a proprietor or permanent tenure-holder may be a service-tenure, or an ordinary tenure or holding, according as it falls under one or other of the definitions of these terms in the Bengal Tenancy Act. Mr. Field observes :— "*Jagirs* were grants of lands to retainers still in service, in lieu of wages. When granted by the Emperor, they were assignments not of the land but of the revenue, and were made as an appendage to the dignity of *mansub*, a kind of nobility conferred for life, and revocable at the Emperor's

[1] Chittagong Settlement Report, page 28, para. 79.
[2] Galloway's India, page 74.
[3] *Ibid.*

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
44	*Jagir*—(contd.)	pleasure. . . . . *Jagirs* were of two kinds, conditional and unconditional. *Conditional jagirs* were granted generally to the principal servants of the Emperor in order to meet the expenses of a particular office: and these were held only so long as office was retained. *Unconditional jagirs* were independent of any office, and were personal grants for the maintenance of a dignity, a suitable number of attendants and the effective troops which the *mansubdar* or *jagirdar* was bound to have in readiness. These grants were for life only. If the lands produced more than the *mansubdar's* allowance, which was always fixed, he was bound to account for the surplus (*tanfir*). There were few *jagirs* in Bengal. In Bihar a large number were created in the time of Shah Alam and of his immediate predecessor during the anarchy and decline of the Mogul Empire. In many instances, owing to our want of information, persons claiming by right of inheritance succeeded to *jagirs*, contrary to the constituion of the Empire; and thus what was originally a mere life grant has become an estate of inheritance."[1]
45	*Jer riayat* ...	See No. 40, *ante*.
46	*Jimba* ...	See No. 40 *ante*.
47	*Jotedars* ...	*Raiyati* holdings are generally known as *jotes*, but the nature and incidents of holdings known under that name differ in different parts of the country. The Rent Commission, quoting from a letter from the Collector of Rangpur written in 1876, described the *jotes* of Rangpur thus— "The *raiyat* who holds direct from the *zamindar* is called a *jotedar*, and his holding is a *jote*, whatever its size, which may and does vary from one paying a rent of one rupee to one of which the rent is half a lakh. The large majority of *jotedars* have small holdings and are *raiyats* proper, cultivating their lands either by their own or hired labour or on the system of *adhiari* or halves. But a large number of *jotedars* have *raiyats* under them, who are called either *chukanidars*, or *kurfa prajas*. The *chukanidars*, too, have often *raiyats* under them,

[1] Field's Regulations, Introduction, page 53.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
47	*Jotedars*—(contd.)	and in some cases, especially in the larger *jotes*, there are four or more degrees before you get to the actual cultivator. *Jotes* are saleable, quite irrespective of the term during which they have been held, whether *jotes* held direct from the *zamindar*, or *chukani jotes* which are held from a *jotedar*. If a man gets a *jote* to-day he can legally transfer it by sale to-morrow. Such sales of *jotes* by registered deed or on decree of Court are of daily occurrence. There is a strong resemblance between the interests in land in Rangpur and those found in the Bhutan Duars. Mr. Glazier says that when the *jotedar* pays Rs. 100 he collects Rs. 200 from the actual cultivators."[1] See also No. 40, *ante*, and No. 48, *post*.
48	*Jotedars, chukanidars, dar-chukanidars.*	The Bengal Tenancy Act is in force in the whole of the Jalpaiguri district, but where anything in the Act is inconsistent with any rights or obligations of a *jotedar*, *chukanidar*, *dar-chukanidar* or *adhiar* as defined in the settlement proceedings or in leases granted by Government in the portion of the district known as the Western Duars, the rights and obligations recorded in the settlement proceedings are enforceable notwithstanding anything contained in the Act.[2] The nature and incidents of the tenancies mentioned opposite are described by the Settlement-officer thus :— "*Jotedar*.—A *jotedar* is a person who holds lands directly under Government. His holding is called a *jote*. He is a tenant with a heritable and transferable title in his holding, vested in him by his lease and by the fact of possession, with the power to transmit this title to those to whom he sublets; he has the right to re-settlement of the land included in his *jote* on the expiry of the term of settlement, but subject to an increase of rent should Government see fit to enhance. His title to possession of the land included in his *jote* is, however, always subject to the superior right of Government as

[1] Rent Commission's Report, para. 14, page 13.

[2] See Government Notification No. 964 T. R., dated 5th November 1898, in Appendix I. *ante*, page 663, and notes to section 1, *ante*, pages 37, 38.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
48	*Jotedars, chukanidars, dar-chukanidars*—(contd.)	proprietor to resume any portion required for public or other purposes, a proportionate abatement being made in the rental, and compensation allowed for any permanent improvements. A *jote* may be acquired (*1*) by direct settlement from Government, (*2*) by purchase, and (*3*) by inheritance."[1] "*Mal jote.*—The expression '*mal jote*' is occasionally used in official correspondence. By a '*mal jote*' is meant a *jote* which had existed at last settlement. *Time-expired jote.*—A 'time-expired *jote*' is a *jote* which has been taken up under the rules for the grant of ordinary leases for arable waste lands, and the preliminary lease of which has expired. *Arable waste land jote.*—An arable waste land *jote* is one of which the preliminary lease had not expired when the present settlement operations commenced. *Chukanidar.*—The tenant immediately below the *jotedar* is the *chukanidar* or *mulandar*. The rent payable by him has been fixed for the term of this settlement. His title to his holding is heritable and transferable. He is not allowed under the provisions of the *jotedar's* lease to sublet the whole or any portion of his tenure under pain of immediate forfeiture of such tenure; but he is permitted to employ *adhiars*. A *chukanidar* cannot be ousted from his holding except by order of a competent Court, notwithstanding the fact that he may not have been twelve years on a *jote*. There is an unwritten law between him and his *jotedar* that he cannot be ousted from his lands so long as he pays his rent. Some *jotedars* endeavour to get over this by giving a *chukanidar* a lease on plain paper; but they never succeed against the *chukanidar*."[2] *Dar-chukanidar.*—This class of tenant holds direct from the *chukanidars*. These tenures have been made contrary to the express orders of Government. Accordingly tenants of this class were not

[1] Jalpaiguri Settlement Report, page 118, paras 636, 637, 638.
[2] *Ibid*, pages 118, 119, paras. 641 to 645.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
48	*Jotedars, chukanidars, dar-chukanidars*—(contd.)	[in the recent Settlement] supplied with copies of the *khatian*, nor was anything done to give them a title to their holdings.[1] "*The Adhiar.*—This tenant has no rights. He pays rent in kind, namely, half of all crops he may grow on land which is allowed to him."[2] The rights and obligations of *jotedars*, *chukanidars*, *dar-chukanidars* and *adhiars* in *Jalpaiguri* outside of the Western Duars, and in *Rungpur*, are regulated by the ordinary provisions of the Bengal Tenancy Act.
49	*Kaim Karshu* ...	See No. 40, *ante*.
50	*Karshadar* ...	See No. 40, *ante*.
51	*Kankut* ...	See No. 105, *post*.
52	*Kartauli, sud-barna.*	"*Kartauli* lease. This is a sub-lease of a portion of the holding of a *raiyat*. The *raiyat*, in consideration of a lump-sum payment, which may be five or seven or nine years' rents in advance, grants a lease. He continues to pay the rent to the *maliks* on the portion of his holding which he has sub-leased to the factory. .....The loan with interest liquidates from year to year. These leases are sometimes for the whole of a holding.....A *raiyat's* sub-lease, analogous to the *kartauli*, is the *sud-barna*, or common usufructuary mortgage.....The advance or loan given to the *raiyat* does not liquidate from year to year. It remains intact. The interest on the advance is equivalent to the rent."[3]
53	*Kat taluks* ...	See No. 117, *post*.
54	*Kat-agat taluks*	See No. 117, *post*.
55	*Katkena* ...	"The lease of an under-tenure is called *katkena*... .....It is the method by which [indigo] factories settle the very few interloping disputes that occur, one factory taking *katkena* from another. Again, to prevent such interloping disputes, the factory that takes a lease of a proprietor's estates in several villages, some of which are not in his own *dehat* (or sphere of influence), gives a sub-lease of the

[1] Jalpaiguri Settlement Report, page 119, para. 646.
[2] *Ibid*, page 119, para. 647.
[3] Muzaffarpur Settlement Report, page 345, para. 884.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
55	*Katkena*—(contd.)	lands in the villages outside his jurisdiction to the factory recognised as entitled to it."[1]
56	*Khairati* ...	(*lit.*, alms, meaning that which is given voluntarily with a good intent), land given in charity by the *amil*, *zamindar*, or *nazim*.[2] May be an estate if now recognised as revenue-free; if not revenue-free, may be a tenure or holding within the meaning of the Bengal Tenancy Act.
57	*Khanabari* ...	"Non-agricultural tenures, which are granted for building purposes to trader artisans and other non-agricultural classes of the community, and go by the name of *khanabari* tenures, are numerous in the populous district of the 24-Parganas."[3]
58	*Kharija jama* ...	(*lit.*, out of, or excluded from, the public revenue), excluded from the revenue, and sold by the *zamindars*.[4]
59	*Khas taluks* ...	See No. 117, *post*.
60	*Khetbatai* ...	See No. 105, *post*.
61	*Khoris* ...	See No. 80, *post*.
62	*Khunt-katti* ...	The following description of these interesting *Mundari* tenancies is given by the Settlement-officer of Ranchi:— "These tenancies are found in Chota Nagpur, and more particularly in the South-East of the district of Ranchi. The language of the family of which the *Mundaris* are members is unconnected with that of any other race in India, and belongs to an early stage of development, and both language and religion have been preserved against external pressure to a remarkable degree. The same conservatism has been shown in the tenacity with which the *Mundaris* have fought for their system of land tenure, which is known as *Khunt-kat ti*. The word itself is probably of Hindu origin, and it is of doubtful etymology; but is meaning is free from ambiguity. The *Mundari* social unit is the village, owned and cultivated by a group of *Khunt-kattidars*. These latter are theoretically, and, in the case of many modern villages, demonstrably descendants of a common ancestor who obtained

[1] Muzaffarpur Settlement Report page 344, Para. 883.
[2] Galloway's India, page 76.
[3] Bengal Administration Report, 1901-02, page 97.
[4] Galloway's India, p. 75.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
62	*Khunt-katti*—(contd.)	possession of the block of jungle which became his home. He cleared a portion of the jungle and left the continuance of his task to his children; and all the descendants in the male line of the original clearer of the jungle are *Khunt-kattidars* of that village. Descent in the female line is ignored, but the stock can be recruited by adoption, with the consent of the rest of the group, though this rare practice is usually restricted to kinsmen on the female side. Cultivated lands are held in separate enjoyment, sons taking equal shares upon the death of the father. The uncultivated land is the joint property of the *Khunt-katti* group. Should any outside *Mundaris* be allowed to cultivate land in the village (as *parjas* or *raiyats*), the rents, if, any, paid by them are the joint property of the group. The relations of this community with the spritual and temporal worlds are managed through the *Pahan* and *Munda* respectively, both of these being members of the *Khunt-katti* group. The importance of the former is minimised by the fact that ancestor worship is the most important element in the *Mundari* religion, in which the head of the individual house is the priest of his family. The *Munda's* function consits in paying over to the superior landlord the rent due for the village, which is made up of the fixed subscriptions of the brotherhood, supplemented in some cases by the rents of the *projas*. These offices tend to become hereditary, but physical or mental inferiority generally involves supersession. The *parjas*, though they may be *Mundari* in race, are never admitted to the *Khunt-katti* group, and, among other marks of inferiority, are not allowed to permanetly bury their adult dead in the village. The *Khunt-kattidars* on the other hand are scrupulous to bury their dead in the village graveyard, and to protect their remains with gravestones. This practice, which is intimately connected with their ancestor worship, furnishes partically a conclusive proof of their *Khunt-katti* title. Hence has arisen the *Mundari* proverb "*Horohonkoa patta sasandri*"—the title-deeds of the *Mundaris* are their gravestones. The claims of an individual to a *Khunt-katti* title in a village can only be estab-

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of renures, etc.	Description and incidents of tenures, etc.
62	*Khunt-katti*—(contd.)	lished by proof of community in the graveyard and the clan. In many cases the *Mundari Khunt-katti* village has been broken up, and the rights of individual *Khunt kattidars* have been reduced to the lands actually in their cultivating possession, which they are by custom entitled to hold at a rent fixed in perpetuity. In a great portion of the district of Ranchi these broken *Khunt-katti* tenancies were surveyed under the name of *Bhuinhari* lands under the Chota Nagpur Tenures Act, 1869 (Bengal Act II. of 1869). In some parts of Ranchi these *Khunt-katti* villages are found arranged in groups, or *pattis* of varying numbers, usually about twelve, under *mankis*. It is doubtful whether these *pattis* are really ancient and it is not clear what the functions of the *manki* originally were. He is invariably a *khunt-kattidar* of the village where he lives. He receives the rents due from the villages in his *patti* and pays them to the superior landlord, being granted by the latter the rents of two or three of the villages as his remuneration. The office is hereditary and indivisible, but it now serves no useful purpose.
63	*Khushki* (indigo).	"Indigo is sometimes grown by *raiyats* not subordinate to the factory on agreements which are called *khushki sattas*. An advance of Rs. 20 to Rs. 30 is given at a light rate of interest. This is usally the basis of the agreement. The indigo plant is paid for at so much per maund." [1] "The remaining *asamiwar* system of growing indigo to be noticed is the *khushki*. In the words of Mr. C. H. Macpherson— 'Under this system the *raiyat* grows indigo, which he sells to the factory at so much per bundle or so much per maund, the weighment test being most in use. The factory may or may not give an advance, and the price usally paid is from 2 to 3 annas per maund of plant (maund=80 *gandas*), according to whether or not certain deduction are made. It works out something over 2½ annas per maund. Seed is provided by the factory. In the case of *khushki*, indigo is very often a second

[1] Muzaffarpur Settlement Report, page 347, para. 887.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
63	*Khushki* (indigo) (contd.)	crop, the lands being prepared and sown after the rice or another crop has been reaped.' "[1] As to the acquisition of occupancy-rights by a *thikadar*, see notes to section 22 *ante*,
64	*Kole raiyat* ...	See No. 40, *ante*.
65	*Langbatai* ...	See No. 105, *post*.
66	*Loksan* ...	See No. 125, *post*.
67	*Mafi* ...	(*lit.*, exempted, privileged, or revenue-exempted lands), exempted on the authority of the *nazim* or the *zamindar*.[2] Mr. Field says: "*Mafigrants* were made by proprietors to *Brahmins*, *Bhats*, *Fakirs* and such like for religious services or through religious veneration. They were hereditary, though not originally transferable. Even when transferred, they were not resumed, and so usage made them transferable in course of time.[3]
68	*Malikana* ...	See No. 80, *post*.
69	*Mandals* (*abadkars*).	"In parts of Midnapore bordering of the *Jangal Mahals* there is a class of tenure-holders termed *mandals*. They were originally substantial *raiyats*, or *abadkars*, who undertook to bring a tract of waste land under cultivation, paying the *zamindar* a stipulated sum as rent. These *abadkars* then reclaimed the land, either themselves, or with the help of other *raiyats* whom they induced to settle under them; established a village, to which they usually gave their name; and, being heads of the settlements, were called *mandals* or headmen. The *zamindar* and the *mandal* from time to time readjust the terms of their bargin, but the former never interferes between the latter and his under-tenants. In settlement proceedings of 1839 these *mandals* were declared to have only the rights of *sthani* or *khudkasht raiyats*, and not to be entitled to any *munafa* or profit, but, though not exactly recognised as *talukdars*, they gradually acquird rights superior to those of ordinary *khudkasht raiyats*; and, as they were left to make their own terms with the *raiyats* settled by them, they must have had a very considerable profit besides what

[1] Muzaffarpur Settlement Report, page 347, para. 888.
[2] Galloway's India, p. 75.
[3] Field's Regulations, Introduction, p. 53.

APPENDIX IV—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
69	*Mandals* (*abadkars*)—(contd.)	they obtained from any land cultivated by themselves. Their *mandali* right became transferable by custom, and when at setttement they came into immediate contact with Government, though not recognised as regular *talukdars*, they were held entitled to consideration. The Government in settlement proceedings deducted 15 *per cent.* from the gross *jama* in their favour, and after some demur they accepted this as a sufficient recognition of their *status*." [1]
70	*Mankhap* ...	See No. 105, *post*.
71	*Marwat* ...	"*Marwat* grants were grants of a little land rent-free as pensions to the heirs of retainers killed in the service of the proprietors."[2]
72	*Miadi muqaddami*.	See No. 82, *post*.
73	*Miras* ...	*Miras*[3] signifies ancestral tenure. Here the term does not express anything as to rent. But in practice, it is a tenure at a fixed rent, and is heritable and transferable.
74	*Miras ijara* ...	See No. 40, *ante*.
75	*Miras karsha* ...	See No. 40, *ante*.
76	*Miyadi* ...	See Nos. 109 and 117, *post*.
77	*Mohturan* ...	From *muhut* (Sanscrit), great, and *turana*, to cherish, *i.e.*, lands set apart for the maintenance of a great or revered person or place. A Hindu grant.[4]
78	*Mudafat* ...	See No. 40, *ante*,
79	*Muddud-maaush*	"This compound word signifies subsistence (*lit.* assistance in living), [and is derived] from *muddud*, aid, and *maaush*, living. It is also stated to be a royal grant in perpetuity, to be transferable, and to convey a rent-free tenure; but it was probably nothing more originally than the grant of a pension to an individual in distress."[5]
80	*Mukarrari*, *thika*, *malikana*, *arazi*, *Khoris*, *inamat*, *birt*.	The Settlement-officer of Muzaffarpur gives the following description of the tenures in Muzaffarpur mentioned opposite :—

[1] Bengal Administration Report, 1901-02, page 97.
[2] *Ibid*.
[3] From *waras*, to inherit.
[4] Galloway's India, page 77.
[5] *Ibid*, page 73.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
80	*Mukarri, thika, malikana, arasi, Khoris, inamat, birt*—(contd.)	"A *mukarrari* is a perpetual lease at a fixed rate of rent, heritable and transferable. A *thika* is a farming lease for a term of years. This is an interest very largely held by indigo factories."[1] *Malikana* is not [always] used [in Bihar in the sense recognised by law, namely, an allowance to a proprietor who refuses to accept settlement of revenue."[2] "The right of *malikana* in Bihar was undoubtedly of great antiquity even at the commencement of the Birtish administration. It was not generally met with in Bengal, where *mashahra*, the nearest equivalent, was an allowance of quite a modern origin. Even at the present day the frequent use of the term *malikana* by the people of Bihar is very striking. It is now usually applied to those cases in which proprietors selling their estates stipulate that so much land (generally from that held in direct cultivation) be assigned to them in perpetuity for their maintenance, with or without the payment of rent. They cease to be responsible for the revenue, and in this way retain sufficient land for their subsistance. Such lands are called *malikana*, and sometimes *arasi*. Sir Jhon Shore's explanation of the origin of true *malikana* is probably correct. A middleman was found with vested rights. Akbar determined to deal direct with the *raiyats*, and the middleman was compensated with an allowance. This would explain why *malikana* did not exist in Bengal, to which Akbar's revenue system was never extended in its entirety."[3] "In the time of the Moghals, it was an invariable custom to allow proprietors, whose estates were leased to *amils* or farmers, an allowance for their maintenance.....The custom largely prevails for proprietors, when alienating their estates, to retain some land for their own maintenance. They may or may not be responsible for the Government revenue, but this in any case is a private arrangement, not binding on Government, for the pur-

[1] Muzaffarpur Settlement Report, page 149, para. 424.
[2] *Ibid.*
[3] *Ibid*, page 46, para. 134.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
80	*Mukarrari, thika, malikana, arasi, Khoris, inamat, birt*—(contd.)	chaser is recorded in the land registration register for the entire share of the estate. The so-called *malikanadars'* rights are permanent, while a *khoris*, on the other hand, is a grant of land given for maintenance by a relative to the grantee for the period of his life-time. The *khorisdar* is rarely, I believe, responsible for the Government revenue of the land so alienated. An *inamat* is a rent-free grant given to a Muhammadan as a reward. It is permanent and transferable. A *birt* is a rent-free grant made to a Hindu for religious purposes. It is also permanent and transferable."[1]
81	*Mukarrari, istamrari.*	"*Istamrari* tenures are tenures granted in perpetuity. *Mukarrari* tenures are those granted at a fixed rent not liable to enhancement. Generally speaking, however the two conditions are now found combined; and where the term is in perpetuity the rent is fixed for ever. These tenures.....are transferable and inheritable, and may be protected by registration from the effects of a revenue sale."[2] It has been held by the High Court that the use of the word *mukarrari* alone in a lease raises no presumption that the tenure was intended to be hereditary, and that the Court should consider the other terms of the instrument under which the tenure was granted, the circumstances under which the instrument was made, and the intention of the parties.[3] The use of the words "from generation to generation" in a lease creates an absolute and hereditary *mukarrari* grant.[4] The use of the word *istamrari*, it was held in one case, shows that the lease was intended to be perpetual and hereditary,[5] but in another case it was held to be doubtful whether *mukarrari istamrari* meant permanent during the life of the person to whom the lease was granted, or permanent and hereditary.[6]

[1] Muzaffarpur Settlement Report, page 149 para. 424.
[2] Field's Regulations, page 39.
[3] *Watson & Co.* v. *Mohesh Narain Roy* [1875], 24 W. R., 176; *Sheo Pershad Singh* v. *Kally Dass Singh* [1870], I. L. R., 5 Cal. 543.
[4] *Sonet Kooer* v. *Himmut Bahadoor* [1876], I. L. R., 1 Cal. 391.
[5] *Kuroonkur Mahotee* v. *Neeladhro Chowdhry* [1879], 14 W. R., 107.
[6] *Lila Nand Singh* v. *Munoronjun Singh*, 13 B. L. R. 133.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
81	*Mukarrari, istamrari*—(contd.)	Under section 11 (*ante*,) of the Bengal Tenancy Act, however, all permanent tenures are, subject to the provisions of the Act, capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property; but section 181 (*ante*,) enacts that nothing in this Act shall effect the incidents of a *ghatwali* or other service tenure, and section 183 (*ante*,) saves customs which are not inconsistent with the Act. On failure of heirs of the lessee, an absolute hereditary *mukarrari* tenure escheats to the Crown, and does not revert to the grantor to his heirs.[1]
82	*Muqaddami* ...	Mr. Maddox, Settlement-officer of Orissa, describes the *muqaddami* tenures in Orissa thus— *Muqaddams.* "The *Muqaddams* [from *mukaddam*, headman of a village] are the old Hindu village headmen or *padhans*, under a Mahomedan name. They are of three classes: (1) *Maurasi*, or hereditary, (2) *Kharidadars*, those who purchased an hereditary right from the *talukdar* or *muqaddam*, (3) or *Zati*, *i.e.*, appointed by the people of a village as their representative, or, sometimes, created by a *samindar*..... *Incidents of the muqaddami tenure.* No distinction was made (in the recent settlement of Orissa) between the three classes—hereditary, purchased, and appointed—provided only that the tenure had been in existence before the British conquest; and the incidents, as recognised in the Settlement and now modified by Act X. of 1859, are— (1) The tenure is hereditary. (2) It is divisible, subject to the limitation that no *samindar* is required to admit to registry or give effect to any distribution or division of the rent payable on account of any such tenure. A division of rent allowed in writing by a *samindar* is binding as against his successor in interest, but not as against an auction-purchaser. (3) It is transferable. (4) The *muqaddam* is entitled to collect the rents fixed at the settlement and to any lawful increase in the rental.

[1] *Sonet Kooer* v. *Himmut Buhadoor* [1876], I. L. R., 1 Cal., 193.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
82	*Muqaddami*—(contd.)	(5) The *muqaddam* is entitled to the possession of all lands in the village not leased to any tenant, and to all profits derived during the term of settlement from the reclamation of the waste lands. (6) The *muqaddam* exercises within his village all other functions and privileges of a *zamindar*. (7) He is liable to the payment of a fixed annual sum to the superior *zamindar*, and the amount so payable is only liable to alteration when the revenue payable by the *zamindar* is revised. (8) On default in payment, the *zamindar* must sue the *muqaddam* for the amount due, under [the Rent law in force] and, if all the landlords join in the suit, the tenure may be sold in execution of the decree, the balance of the purchase-money, after the satisfaction of the claim, going to the defaulter. (9) On such sale the *muqaddams* are liable to be ousted from the lands in their possession, even though forming part of their ancestral *pitrali* land. (10) On recusancy they are entitled to a *malikana* of 5 per cent., but not to re-entry at the next settlement. (11) On purchase by the superior landlord the tenure does not lapse, but remains separate and distinct."[1] It has been held by the High Court that the *zamindar* cannot extinguish a *muqaddami* tenure, since such tenure is not derived from him.[2] The *muqaddams* of Bhagulpur have been held to be entitled to all the privileges of *maliks*, and to be quite independent of the *zamindar*.[3]
	Miadi ...	*Miadi muqaddams.* "Besides the *muqaddami* tenures [above-mentioned], in which the right to possession was fully established, there are also others where, though the claimant failed to

[1] Orissa Settlement Report, Vol. I., pages 188, 189, paras. 279, 281.
[2] *Gansham Jana* v. *Mussamat Kuneeha Dabi*, S. D. A. [1860].
[3] Morley's Digest, Vol. I., page 406; *Rung Lal Chowdhury* v. *Rama Nath Dass.*

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
82	*Muqaddami*—(contd.) *Miadi*—(contd.)	prove a good title, he was, as being actually in possession, recorded in the settlement papers, and given an allowance, but his tenure was voidable on sale of the estate for arrears of revenue or under the decree of a Civil Court. Such is the case with *muqaddami mauza* Jaganathpur in Pargana Nahakhand, district Cuttack; also with several of the tenures in Parganas Sujanagar and Saidabad, and in Taluk Bisnabar, which were created by the *zamindar* after the conquest. As a rule the temporary tenure-holders received the same allowance as *maurasi muqaddams*, but in a few instances only 10 per cent. was given."[1]
	Padhani ...	"The old Hindu name of the village headman was *padhan*, but most of this class became absorbed as *muqaddams* into the Mahomedan system; the survivors being for the most part in Lembai and the other Parganas of Puri allotted to the Raja of Khurda. Their position differed from that of the *muqaddams* in two points— *Padhani.* (1) that, unlike the *muqaddams* who held a fixed amount of *jagir* lands, the *padhan* had a customary right to hold one *mán* in every 20 *mán* of *raiyati* land in cultivation, free of assessment, as his '*pitrali*' of ancestral land; (2) that, in default of sale of the tenure, the *muqaddam* retained his *jagir*, but the *padhan* was ousted from his '*pitrali*.' At the settlement of 1837 they received exactly the same treatment as *muqaddams*, with this exception, that while to the latter the right of re-entry after recusancy was disallowed, to *padhans* it was conceded."[2]
	Pursethi ...	The Settlement-officer of Orissa writes:— "The *pursethis* are not a common class of proprietary tenure-holders, and I cannot find any better account of them than that given by Mr. Mills, which I here quote:— *Pursethis.*

[1] Orissa Settlement Report, Vol. I., page 189, para. 282.
[2] *Ibid*, page 190, para. 283.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
82	*Muqaddami*—(contd.) *Pursethi*-(contd.)	'The word *Pursethi* is of Sanskrit derivation, and means the headman of the *patna*. There are two classes of *pursethis*. The first and the most numerous are *pursethis* of a particular class of *patna*, appointed by the founder of the *patna* or the village community. His office, which depends on the will and pleasure of his superior, is to collect the rents, superintend the cultivation, settle *raiyats* in the village and perform all other functions of a purely ministerial nature. His emoluments are, in part, lands at low rates and in part a profit on the collections, varying in proportion to the extent of the village. The proprietors in some instances allow them to engage for the revenue of the village, in which case they are bound to pay a fixed sum as rent, and are allowed to enjoy whatever they can realise over and above that amount. 'The other class are *pursethis* who have purchased or acquired from the *zamindar* a grant of land and established a village on it, which is designated *patna*. The rights of these very nearly assimilate to those of the *muqaddams*. They can alienate their property, which is hereditary, bequeath it to others; and may in every respect be considered, like *muqaddams*, proprietors of the land contained in the *patna*, subject to a certain fixed demand. I cannot ascertain whether they pay any *russoom* to the *zamindar*; the present incumbents do not, but it is customary to make a trifling present at the auspicious *Soonia*.' To the second class belong the *pursethi muqaddams* of taluk Abdulabad of Assureswar and of Pargana Bakhrabad in Cuttack, who received exactly the same treatment as *muqaddams*. Of the former class was the *pursethi* of Chauliagung *patna*, who at the last settlement was found so incompetent that the Collector dismissed him and appointed in his place one of the numerous proprietors of this village, allowing him 10 per cent. for the expenses of collection from the *raiyats* and co-sharers. He was subsequently ousted by the villagers, and his heir has not been recognised in this settlement. Here therefore the *pursethi* was of the nature of a "*reportdar*" in a *sasun* village,

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
		the other proprietors becoming *shikmi zamindars.*"[1]
83	*Nakdi, shikam, chakath.*	In the final report on the survey and settlement operations in the *Tikari* Ward's estates and of Government estates in Gaya, the following description is given of the tenancies mentioned in column 2, which prevail in Gaya :— "*Nakdi* lands are of three kinds (in Gaya), ordinary *nakdi, shikam* and *chakath.* The ordinary *nakdi* tenure presents no peculiarities. A *shikam* holding is one held on a cash rent fixed for ever—at least, such is the definition accepted by the *Tikari Raj*, but there are other proprietors, I believe, quite prepared to contest it. Two derivations have been assigned to the term. Dr. Grierson accepts *sikka* as its origin, the *Tikari* estate having fixed the cash rents in *sikka* rupees. The other derivation is from *shikam*, the Persian word for the belly; and this land might be justly so called, as it is invariably the best in the village, usually yielding two crops, and therefore greatly relied on for the sustenance of the family. Dr. Grierson writes this tenure as *shikmi*, but I believe it is not so called by the people at large, *shikam* being the word used. Under-*raiyats* in Gaya are rare, but where found their rights, as elsewhere in Bihar, are styled *shikmi*. *Chakath* lands are those temporarily settled at cash rents. Dr. Grierson says the term is specially applied to waste but cultivable land settled for a limited term of years with a view to reclamation. He adds that the name is frequently applied to ordinary *nakdi* holdings. But settlements of this nature are made not only of waste lands, but also of lands which, owing to difficulty of irrigation or natural unfertility, are unpopular and will be taken on no other terms. Then, again, the landlord may not have the means to put the irrigation system in a sound state, and without it the tenant will engage on no other terms. The landlord reserves to himself the right to demand a produce rent on the expiry of the lease, but in practice this right is seldom enforced. The rents of lands converted by the *Tikari Raj* from produce

[1] Orissa Settlement Report, Vol. I., page 192, para. 283.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
83	*Nakdi, shikam, chakath*—(contd.)	into cash are called *chakath*. In fact the *chakath* is the link between the old and new, and by its extent the tendency of produce rents to be commuted into cash can be gauged. That this tendency exists cannot be doubted. Even so early as 1812 Dr. B. Hamilton wrote :— 'The chief change that seems to be taking place is that a great deal of land which formerly paid by a division of crops has been lately given for a money rent. This is especially going on under the prudent management of the *Raja Mitrajit* (of *Tikari*), and is one of the greatest improvements that can be effected.' Such, too, is the policy of the *Tikari Raj* up to the present day. In some cases whole villages have been commuted to *chakath*, but more often small plots are given on these terms to the *raiyats*, the chief reasons being—(*1*) that the land, being surrounded by other lands paying cash, is inaccessible, and appraisement cannot be made without inconvenience and delay; (*2*) that the land requires breaking up and fertilising; (*3*) that tenants have no cash-paying lands and want some in order that, among other reasons, they can grow crops which they are at liberty to cut at any time in order to feed themselves or their cattle." [1]
84	*Naksan* ...	See No. 125, *post*.
85	*Nankar* ...	"(*Lit.* bread for work), stated to be land given by the *amils* or *nazim*, or the *zamindars*, *chaudhris*, *talukdars*, for some service performed. It was, however, an allowance received by the *zamindar* while he administered the concerns of the *zamindari*, from Government, without reference to proprietary right. When he did not administer the affairs of the *zamindari*, no *nankar* was allowed."[2] Mr. Field says: "*Nankar* was an assignment of land or revenue for subsistence, consisting sometimes of one or more entire villages, sometimes of a portion only of a village. It was made in some instances to proprietors, in other instances to persons having no proprietary right, such as *kanungos*, *muqaddams*, *chaudhris*, *kazis*, who were

[1] Gaya Settlement Report, page 24, para. 67.
[2] Galloway's India, p. 76.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
85	*Nankar*—(ctd.)	generally however servants of the State; and it was doubtless in this capacity that the allowance was made to *zamindars*. Sub-proprietary *nankar* is usally an assignment like *didari*, but differing from it in this, that not *land*, but a portion of the rental in *money*, was the subject of the assignment. Sometimes a fixed sum was given, and sometimes a fractional share of the *then* rental. In the latter case, however, the item remained fixed and not subject to enhancement or abatement."[1]
86	*Nim howla* ...	See No. 40, *ante*.
87	*Nim osat howla.*	See No. 40, *ante*.
88	*Nim osat taluk.*	See No. 40, *ante*.
89	*Nim raiyat* ...	See No. 40, *ante*.
90	*Noabad taluks*...	See No. 43, *ante*, and No. 117, *post*.
91	*Nusseri durgah*	"(*Lit.* an offering at a sacred place) for maintaining places of worship."[2]
92	*Osat howla* ...	See No. 40 *ante*.
93	*Osat nim howla.*	See No. 40, *ante*.
94	*Osat nim raiyat.*	See No. 40, *ante*.
95	*Osat taluk* ...	See No. 40, *ante*, and No. 117, *post*.
96	*Padhani muqaddami.*	See No. 82, *ante*.
97	*Pahi raiyats* ...	"*Pahi raiyats* originally meant non-residents cultivating lands in villages other than the villages in which they lived, but in course of time the term *pahi* came [in Orissa] to be used of all lands that were neither *thani* nor privileged, *i.e.*, *basyafti*, nor held by the headmen or servants of the village community as *jagir*. These lands, when taken up and filled by a *thani raiyat*, were generally called *karpahi* or *thanipahi*, and the holder acquired in them a right of occupancy; when tenanted by a resident of another village they were called *upper-pahi*, and the tenant had practically no rights beyond those secured him by the *patta* or lease that he received."[3] Under the Bengal Tenancy Act, sections 20 and 21 a *raiyat* who has for twelve years held continuously as a *raiyat* land situate in any village becomes a settled *raiyat* of that village, and has a right of occupancy in all land held for

Pahi raiyats.

[1] Field's Regulations, Introduction, page 51.
[2] Galloway's India, p. 75.
[3] Orissa Settlement Report, Vol. I. page 220, para. 324.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
97	*Pahi raiyats*—(contd.)	the time being in the village. Residence is not a condition precedent to the acquisition of occupancy rights. *Pahi raiyats* are, therefore, "settled," "occupancy" or non-occupancy *raiyats*, according as they fall under any of those classes as defined in the Bengal Tenancy Act. See also No. 20, *ante*, and No. 98, *post*.
98	*Pahi* and *thani raiyats*.	The nature and incidents of *thani* and *pahi raiyati* holdings in Orissa are described by the Settlement officer thus :— *Thani raiyats.* "In the earliest times of which we have any historical knowledge we find the cultivators broadly divided into two groups—the *thani* or resident and the *Pahi* or non-resident. *Thani* (from *sthan*, place) *raiyats* were the burgesses of the village. Their houses they held rent-free; for their ancestral lands they paid a fixed rent determined by custom or the decree of the ruling power. They had a voice in the distribution of land by the headmen, and could take up and cultivate at privileged rates any field lying waste or in the possession of a non-resident *raiyat*. In the case of rent-free grants situated within his village, the property of priests or others who could not hold the plough themselves, the *thani raiyat* had generally the preference as under-tenant or *metayer*. He had, in common with his brother guildsmen, the right to use the pastures, the thatching grass and the fire-wood jungle. His right of occupancy was hereditary, and his credit with the village money-lender stood higher than that of the nomadic *raiyat*, who had nothing to lose by absconding. For all these privileges the *thani raiyat* paid very highly, as it was on him that every increase in the land-revenue ultimately fell. The *pahi raiyat* in those days when land was plentiful could oppose a demand for an increased rent by simply throwing up his holding. This the *thani raiyat* could not do without forfeiting his home, his position, and all that was most dear to him, so that he generally stayed and paid unless he was strong enough to resist the claim for enhancement. In this connection I would quote the following passage from Mr. Stirling's Minute

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
98	*Pahi* and *thani raiyats*—(contd.)	[written in 1821], paragraph 66, on the land tenures of Orissa:— 'It appears to me a clear established principle in Cuttack, and it is scarcely denied by any whose notions of landed property have not been altogether newly modelled by the British laws and regulations, that the superior holder, whether *maquddum* or *taluqdar*, has no shadow of a right to dispossess the *thani raiyat* from his land so long as he pays the rent demandable, and also that that rent was formerly fixed by Act of the Government on consideration of the quantity of soil tenanted by each, its produce and value, in reference to which the *samindar's* payments have been adjusted, and consequently that he has no title whatever to require an increase. The unprosperous state of the *raiyats*, however, for a long series of years must necessarily have introduced numerous alterations and fluctuations. Where a resident cultivator has broken down from misfortune or oppression, the *samindar* must of course lower his rents temporarily, if he wishes to prevent his absconding or starving; a relief which would render him liable to an equivalent subsequent increase; and, when a cultivator cannot or will not pay his rent, it has been at all times customary to make over temporarily his lands to any other person who may be willing to take charge of them. The interests of the *raiyats* are too little understood in Cuttack to enable me to say what period of recusance to cultivate or inability to pay would involve a final forfeiture of the title of fixed occupancy, supposing it could ever be the interest of the *samindar* to impose such a penalty. With respect, too to the payment of a fixed *jamabandi* or quantum of rent for the same quantity of land, the advantage is merely nominal, as the person who collects has long exercised the power of imposing additional burthens in a variety of shapes and names, which the *raiyat* cannot resist the payment of; and many of which become in the course of years consolidated with his established rates.' The British conquest made no difference to his rights, and the settlement of 1836 only stereotyped

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
98	*Pahi* and *Thani raiyats*—(contd.)	them by supplying an accurate record of the *thani* lands and of the rent that could be lawfully demanded for them..... The next step in the development of the rights of tenants was the passing of Act X. of 1859, which was intended to substitute for the old division between *khudkasht* and *pahikasht* that of resident and non-resident *raiyats* giving to all who could prove occupation for twelve years a right of continued occupancy. This, however, the *thani raiyat* already possessed, and the Act only affected him in so far as it defined the procedure to be followed by his landlord for the recovery of arrears of rent."[1] Incidents of the *Thani* tenure. "The incidents of the tenure as they stood after the passing of this Act appear to have been as follows:— (1) A right of occupancy so long as the rent was regularly paid. If at the end of the year the rent remained in arrears the *zamindar* could bring a suit for the tenant's ejectment, and turn him out if the arrears were not paid within fifteen days of the date of the decree (sections 21 and 78, Act X. of 1859). (2) Right to the produce of all crops and the fruit of all trees growing on his land. (3) Right to the use of the village pasture land and to take fuel from jungle. (4) Fixity of rent for the term of settlement: this was secured them by their leases. (5) Right of inheritance according to the Hindu law. The land could be divided among the heirs, but the landlord was not bound to recognise any division of the rent (section 27, Act X. of 1859). (6) The tenure was not transferable by sale or gift. (7) The *raiyat* could surrender his holding by giving notice of his intention in writing to the landlord, or his authorised agent, before the month of *Chaitra* of the year preceding that in which the relinquish-

[1] Orissa Settlement Report, Vol. I. page 215, para. 319.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
98	*Pâhi* and *Thani raiyats*—(contd.)	ment was to take effect. If he failed to give such notices he was liable for the rent of the land for the ensuing year (section 19, Act X. of 1859). (8) He was not entitled to remission of rent on account of damage by flood drought or' or other calamity, unless a provision to that effect was entered in his lease. Such provisions were found in Parganas Rahang, Serai, Chaubiskud, and Lembai of Puri. (9) The tenure was not vitiated by sale of the parent estate for arrears of revenue or otherwise, and could only be terminated by the relinquishment of the *raiyat*, by his ejectment, by his accepting a permanent reduction of rent, or by unauthorised alienation of the land. These conditions subsist practically unchanged up to the present day, and the only conditions that are open to discussion or require any special comment are the sixth and ninth. The right to the fruit of trees and the use of pasture lands will be considered when treating of *raiyats* in general. As regards the eighth condition, Mr. Wilkinson is responsible for the existence of the provision referred to. We find it also in Khurda."[1] Transfer of *thani*. "In paragraph 67 of his Minute of 1821, Mr. Stirling writes:— 'After the most careful inquiry, I have been unable to discover any instances of a *raiyat* selling or mortgaging his lands, nor can I meet with anyone who thinks they possess such a right, or is aware that such has ever been exercised in practice.' No enactment has ever given to the *raiyats* the power of alienation that they did not then possess; but sales are very common indeed, and several Assistant Settlement-officers have expressed an opinion that they can be made without the *zamindar's* consent. .....

[1] Orissa Settlement Report, Vol. I, page 217, para. 320.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
98	*Pdhi* and *Thani raiyats*—(contd.)	My experience [the Settlement-officer writes] is that *thani* is freely sold and that it is only in a few Parganas that the purchasers are recorded as *pahi*. Indeed, there are many cases in which *thani* holdings have been sold by Civil Courts in execution of decrees, and the new tenant has been perforce recognised by the *zamindar*. In all cases of voluntary sale, the *zamindar*, before recognising the transfer, requires that all arrears of rent should be paid up in full, and further demands from the vendee a *rusum* that may amount to one-furth of the price. In some cases, as in Kodinda, he also takes from the vendor a *salami* of a couple of rupees. In other parts the *zamindars* generally are contented with the payment of the arrears and a couple of rupees as *dakhil kharij salami* from either party. In conclusion, we may say that *thani* is now-a-days transferred, but that the *zamindar* does not record the transferee in his *sherista* as *thani raiyat* without a fee."[1] Briefly, it may be said that *thani raiyats* are settled *raiyats* under the Bengal Teneney Act, special incidents of their holdings being (*1*) that their rents cannot be altered during the period of the revenue settlement,[2] (2) that they are entitled to graze their cattle without charge on certain lands which have been set aside for fuel and pasture reserves and have been exempted from assessment of revenue and recorded as the property of the village community, and (*3*) that they are entitled to take as much fire-wood and thatching grass from these reserved lands as may be sufficient for their own consumption.[3] *Thani-pahi.* "Besides his ancestral *thani* lands and the lands temporarily cultivated and paid for at the ordinary *pahi* rates or in kind, the *thani* raiyat commonly held a large area of land in his own village called *thani-pahi* for which he paid at an intermediate rate. . . . . The rights of the holder of *thani-pahi* and *karpahi* lands appear to have differed only from those of a

[1] Orissa Settlement Report, Vol. 1, page 220, para. 321.
[2] *Ibid*, page 319, para. 476.
[3] *Ibid*, page 318, para 474.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
98	*Pâhi* and *Thani raiyats*—(contd.)	*thani* raiyat in that the latter was entitled to his house rent-free, while the former was not, but paid a very high rent for any homestead held in addition to the *thani minha*; in fact, we find in Balasore that *thani pattas* were given to persons who already held *chandina*. I cannot ascertain whether the same right to fixity of rent was recognised as in the case of *thani* lands, but it appears certain that there was a right of occupancy. After the Settlement of 1836 *thani* raiyats continued to take up *pahi* land at lower rates, and in many instances the two classes of land became inextricably confused, thus giving rise to the mixed *thani-pahi* tenancy as recorded in the papers of this settlement. Unfortunately the term *thani-pahi* has been loosely used to designate holdings composed of perfectly separate and distinct *thani* and *pahi* lands for which rents are separately paid, as well as holdings in which the lands are so mixed that the *raiyat* cannot separate them, and the landlord has taken a lump rent for both and enhanced or reduced it as if the whole holding were *pahi*. In either case separate rents have been fixed for *thani* and *pahi*, and the incidents of the *thani* tenure declared to belong to the *thani* portion; but when the lands are indistinguishable the whole is practically the holding of an ordinary settled *raiyat* of the village."[1] See also No. 97, *ante*,
99	*Paran* ...	"The second class of tenure[2] is *paran*, and is peculiar to lands devoted to sugar-cane. . . . The land in a village fit for sugarcane is divided into three blocks, in each of which a tenant has a share. In two years each block can grow two crops, sugarcane and poppy; the former being on the ground for 14 and the latter for only 3 months. In the third year rice is grown as a rotation crop. According to this rotation each block is sown in turn with sugarcane, poppy and rice. For the blocks under sugarcane and poppy, cash rents are paid at specially high rates, while for the blocks under rice rent is paid in kind."[3]

[1] Orissa Settlement Report, Vol I., page 219, para. 323.

[2] "Tenure" is here used, not in the sense of the Bengal Tenancy Act, but as meaning tenancy.

[3] Gaya Settlement Report, page 25, para 69

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
100	*Patni taluks* ...	See No. 117, *post.*
101	*Patwari jagirs.*	See No. 110, *post.*
102	*Phalbhag* ...	See No. 105, *post.*
103	*Phanridari chakran.*	See No. 21, *ante*, and No. 110, *post.*
104	*Piran* ...	"From *pir*, a confessor or spiritual guide. Lands set apart for a *pir*. A Moslem grant."[1]
105	Produce-rents ...	See notes to sections 69 and 71, *ante.* "Akbar, in instructions issued to his *malgusars*, described payments of rent in kind as of four classes:— (1) *Kankut.*—The land on which the crop is standing is measured and the outturn estimated. In case of doubt a portion of the produce is weighed. (2) *Batai.*—The harvest is reaped and divided on the threshing-floor. (3) *Khetbatai.*—The field is divided as soon as it is sown. (4) *Langbatai.*—The grain is formed into heaps and a division made. It was pointed out by him that both the *kankut* and and *batai* methods are liable to imposition if the crops are not carefully watched. It is these two methods that prevail in Gaya; what is called *kankut* by Akbar being known as *danabandi.* Under the *batai* or *aghor-batai* system, as it is usually called (being so styled because, as pointed out by Akbar, it requires "watching"), the grain is harvested by the cultivator and carried by him to the threshing-floor, where after payment of the wages of the labourers engaged on harvesting, the balance is divided between the landlord and the *raiyat*, half and half, or in the proportion of 9 to 7."[2]
	Aghor-batai ...	See *ante* and *post*, opposite No. 105.
	Batai ...	Also known as '*Aghor-batai.*' This is a system of payment of rent in kind by which the produce is actually divided on the threshing-floor. The cultivator conveys the crop to the threshing-floor, and the wages of the labourers are paid out of the crop before any division is made. The division

[1] Galloway's India, page 77.
[2] Gaya Settlement Report, page 22, paras. 62, 63.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
	Produce-rents—(*contd.*)	between the landlord and tenant is generally half and half, but is sometimes in the proportion of
105	*Batai*—(contd.)	9 parts for the landlord and 7 parts for the tenant. Various deductions are, however, made from these shares, on account of payments due to village officials, etc., before they are distributed to the parties. A full description of the working of the system in Gaya will be found in a note written by Mr. Ogilvy, Manager of the Tikari Raj Estates, and reproduced at p. 22 of the Gaya Settlement Report.
	Bhaoli ...	A general term for a produce rent, whether paid on the *batai* or the *danabandi* system. See *Batai* and *Danabandi*.
	Danabandi ...	This is a system of payment of produce rent which is also known as *kankut*. It is thus described by the Settlement-officer of the Tikari Estates in Gaya :— "Under the *danabandi* system the landlord, or his agent, and the cultivator repair to the fields when the crops approach ripening. The accountant (*patwari*), the assessor (*amin*), tne measurer (*jarib kash*), an arbitrator (*salis*), a writer (*navisinda*), and the headman of the village, accompany them. The field is measured with the local pole, and a conclusion come to about the out-turn, either by guess or test crop-cutting. This is done with regard to every field of the cultivator held on a *bhaoli* rent, and the results recorded by the *patwari* in a *khasra*, which is signed by the cultivator. The total share of the landlord is entered in a statement called *behri*, appraised according to the market-value of the grain, and, if the agreement is to pay in cash, the cash equivalent is entered as a demand against the tenant, who can then take away the whole crop. If, however, the parties cannot come to terms, a test crop-cutting is made, the landlord selecting ½ a *katha* of the best part of the field, and the raiyat ½ a *katha* of the worst part. The produce of both is reaped and weighed; these form the basis of the appraisement."[1] The calculation of the shares to be actually taken by the landlord and the tenant are, however,

[1] Gaya Settlement Report, page 22, para. 62.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
105	Produce-rents—*Danabandi*—(contd,)	subject to various deductions, similar to those made in the case of *batai* rents. See *batai*, *ante*.
	Dhulibhag ...	"*Dhulibhag* means, literally, a "sharing of the dust," and implies an equal division of the grain as well as of all bye-products. Under this system the entire cost of cultivation is borne by the tenants, and, when it comes to maturity, the crop is reaped in the presence of the landlord's agent and carried by the tenant to the threshing-floor, where an equal division is made in the presence of both parties. The tenant thus gets as his share a bare half of the produce, less all expenses, the only contributions made by the lanlord being the payment of half the water-rate, if any, and the giving of advances of seed, to be recovered in addition to his ordinary half share of the crop."[1]
	Kankut ...	See *Danabandi*.
	Khetbatai ...	See *ante*.
	Langbatai ...	See *ante*.
	Mankhap / *Sanja* ...	Under the *markhap* system the *raiyat* agrees to pay so many maunds of grain per *bigha*.[2] This system is called *Sanja* in Orissa.[3]
	Paran ...	See No. 99, *ante*.
	Phalbhag (or *rajbag*) ...	"*Phalbhag*, or *rajbag*, meaning a division of the fruits or grain only, the straws or other bye-products being left with the cultivator, is a less common form of produce rent."[4]
106	*Pursethi* ...	See No. 82, *ante*.
107	*Rajbag* ...	See No. 105, *ante*.
108	*Sanya* ...	See No. 105, *ante*.
109	*Sarbarakari* ...	The Orissa Settlement-officer describes the nature and incidents of the *sarbarakari* tenure thus— "The nature of the *sarbarakari* right, its origin and the principles to be followed in disposing of *sarbarakari* claims were the subject of much correspondence at last settlement [*i.e.*, the Settlement of Orissa made in 1838]. As to the origin of the right I may quote paragraph 3 of Mr. Commissioner Rickett's No. 1131, dated 23rd April, 1838, to the Board of Revenue :—

[1] Orissa Settlement Report, Vol I. page 355, para. 534.
[2] Muzaffarpur Settlement Report, page 312, para. 823.
[3] Orissa Settlement Report, Vol. I. page 356, para. 536.
[4] *Ibid*, page 356, para. 535.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
109	*Sarbarakari*—(contd.)	'Some of these *sarbarakars* were originally mere servants of the *samindars*, who collected rents from the cultivators and enjoyed *jagirs*. Some parts obtained possession of their villages as farmers only, but, the tenure having descended for several generations from father to son, a prescriptive right has been created. Some were *Sirdar Paiks*, who, with their subordinates, were bound to attend the summons of their chiefs to the fields. They paid rent for that part of their village lands not occupied as *jagir*. All classes now claim equal privileges, continued possession of their villages, paying the *jama* which at the last Settlement may be assessed.' "[1] "Such being the diversity of origin of the *sarbarakari* tenures, there was naturally the greatest variety in the rights and liabilities of the many claimants to admission at the last settlement, and, after a great deal of correspondence and some rather contradictory orders, the following principles were laid down by Government for the guidance of the local officers, and may be accepted as an authoritative declaration of the rights and incidents of the tenure :— Incidents of *sarbarakari* tenure. '*Firstly*.—That the *sarbarakari* tenure is recognized as one of the existing under-tenures of the Province.' '*Secondly*.—That the Collector at the time of making a settlement must, as in the case of *muqaddams*, fix the share of the existing rental to be allowed to a *sarbarakar* and the amount payable by him for the village under his management to the *samindar*.' '*Thirdly*.—That if a *sarbarakari* tenure be found at the time of Settlement in the possession of several joint-*sarbarakars*, the Collector, with the concurrence of the *samindar*, may select one or more of the body to be recorded manager of the *sarbarakar*.' '*Fourthly*.—That *sarbarakars* so selected and recorded cannot be ousted from their tenures, except for default of payment of rent, or for mismanagement proved to the satisfaction of the Collector.'

[1] Orissa Settlement Report, Vol. I. page 190, para. 284.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
109	*Sarburakari*—(contd.)	'*Fifthly.*—That the tenure should never be admitted at the time of settlement as a hereditary property *maurasi sarbarakari* unless it has been held as such uninterruptedly from a period antecedent to the British accession, *i.e.*, antecedent to 14th October, 1803, and unless the claimant be in possession of the tenure at the time or within a year previous to the time of Settlement.' '*Sixthly.*—That, in cases in which hereditary succession or uninterrupted occupation cannot be shown but the claimant himself has been long in possession, and is in possession at the time of settlement, the Collector may, in consideration of occupancy, and according to its duration and circumstances, propose a temporary admission of the tenure (*miyadi sarbarakari*) for such term and on such conditions as the case may seem to require.' '*Seventhly.*—That no admitted *sarbarakari* tenure, hereditary or temporary, can be alienated or subdivided without the consent of the *samindar.*' In the correspondence on the settlement of *taluk* Bamanpur, it was further laid down that in cases of default in payment of the *jama* fixed the rights of the *sarbarakars* should revert to the *samindar.*"[1] "*Sarbarakari* tenures are neither saleable nor divisible without the consent of the *samindar*—*vide* 1 W. R. 322, I. L. R., 9 Cal. 526, aad I. L. R., 11 Cal. 699. *Muqaddami* rights can be transferred in part without the *samindar's* consent, and the *samindar* is required to register the name and extent of interest of the transferee, but he is not bound to divide his rental and take a proportionate share of it from the latter—*vide* section 27 of Act X. of 1859. In case of succession to a *muqaddami* or a *maurasi sarbarakari* tenure, the *samindar* is bound to register the names of all the heirs of the deceased tenure-holder, but the latter remain jointly responsible for the rent, and the landlord is not bound to split up his *jama.*

[1] Orissa Settlement Report, Vol. I. page 190, para. 285.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
109	*Sarbarakari*—(contd.)	Notice of division must in all cases be given to the *zamindar*, and it is the interest of the new tenure-holder to have his name recorded in the landlord's *serishta*. As a matter of fact, permanent tenures are frequently transferred and bequeathed in Orissa, although the High Court have held[1] in some cases that the *sarbarakari* tenure is not transferable without the *zamindar's* consent. In practice *sarbarakari* tenures are always sold without the *zamindar's* consent, and *after* the sale the purchaser generally silences the *zamindar's* opposition by giving him a fee at the time of registration of his name in his *serishta*. Practically, therefore, the *zamindar's* vetoing power consists in demanding a fee at the transfer of the *sarbarakari* tenure."[1]
	Miyadi sarbarakari.	"In the case of the *miyadi sarbarakars* admitted under the sixth provision of the rules quoted, the term fixed was usually that of the settlement; in other cases they were given only a life right, the tenure lapsing to the *zamindar* on the death of the incumbent. *Miyadi Sarbarakari tenures.* Besides the restriction of the term of settlement, the temporary tenures differed only from the heriditary or *maurusi sarbarakaris* in that, on sale of the parent estate for arrears of revenue, or under the decree of a Civil Court, the former were voidable. . . . . In practice, however, these tenures are invariably brought to sale as though they were *muqaddami*, and are sometimes bought in by *zamindars* themselves, who continue to hold them as separate properties. For instance, in Saibir all the *sarbarakari* tenures but one are now held. in whole or part, by the *zamindars*, though some were only confirmed for the lifetime of the incumbents. In the recent settlement no distinction except in name has been made in the engagements taken from temporary and permanent *sarbarakars*, and their tenures are protected for the next thirty years."[2]

[1] Orissa Settlement Report, Vol. I. page 246, para. 354.
[2] *Ibid*, page 191, para 286.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
109	*Sarbarakari*—(contd.) *Miyadi sarbarakari*—(contd.)	Ejectment of *sarbarakars*. "Section 65 of the Bengal Tenancy Act, which has been extended to Orissa, protects from eviction for arrears of rent all permanent tenure holders, such as *maurasi sarbarakars*, and though section 11, which makes permanent tenures transferable, has not been extended, the effect of the change of law will be to crystallise the practice of putting up to sale *maurasi sarbarakaris*. With the *miyadi sarbarakaris* the case is different. Had temporary engagements been taken from the holders they would doubtless have continued to be liable to eviction; but custom can make a tenure permanent, and for many years it has been the custom to treat *miyadi sarbarakars* as though they held heritable, permanent, and transferable tenures, and now in this settlement [*i.e.*, the recent settlement of 1898] their status has been tacitly acknowledged to be the same as that of their *maurasi* brethren. It cannot be prophesied what the Civil Courts will hold, but there is at least room to surmise that no distinction will henceforward be made between the two classes."[1] It has been held by the High Court that the *sarabarkari* tenures of Cuttack are permanent and hereditary, and transferable with the *zamindar's* consent;[2] but in practice these tenures are sold without the *zamindar's* consent. *Sarbarakari* tenures are not service tenures, and are not therefore affected by the provisions of section 181 (*ante*,) but section 11 (*ante*,) which makes all permanent tenures transferable, not having been extended to Orissa, *sarbarakari* tenures appear not to be transferable without the consent of the *zamindar*.
110	Service tenures [*chaukidari chakran, ghatwali, patwari jagirs, thanadari*(or *phanridari*) *chakran*]	Besides the tenures, some of which are described in these notes, and which are "derived either from ancient rights, or created to relieve the *zamindar* of the trouble and risk of direct management, or of the labour and expenditure required for reclaiming waste lands, there are various service (*jagir*) tenures, of which the *chaukidari chakran, thana-*

[1] Orissa Settlement Report, Vol. I. page 191, para. 287.

[2] *Doorjadhan Doss* v. *Obhooya Doye* [1864]. 1 W R., 322; *Saddanando Maiti* v. *Nowratlam Maiti* [1871], 8 B. L. R. 280; *Kasheenath Punce* v. *Lukhmonee Pershad Patnaik* [1873]. 19 W. R. 99.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
110	Service tenure—(*contd.*)	*dari*, or *phanridari chakran*, the *patwari jagirs* and the *ghatwali* tenures are the most important. The *paikan jagirs* of Midnapore are also noticeable."[1] See also Nos. 21, 38 and 44, *ante*.
111	*Shamilat taluk*	See No. 40, *ante*.
112	*Shikam* ...	See No. 83, *ante*.
113	*Sir-shikun* ...	"(*Lit.* broken-headed, but stated to be) land broken or separated from the capital or head; granted in charity, by *samindars*, *chaudris*, *kanungos*. It is a grant of parcels or portions of land to some public functionary of the village, the priest, or perhaps the village washerman or plough-maker, to induce him to reside there. It is taken a little and little from each *samindar* or head, *i.e.*, breaking a little off each head to give for the above purpose; so called *sir-shikun*, head-breaking."[2] May be an estate if now recognised as revenue-free, and, if not revenue-free, may be a service-tenure, ordinary tenure, or holding.
114	Special tenures.	"In the vicinity of Calcutta, in Baranagar and Panchannogram there are a large number of permanent tenures of very old standing, which are saleable and heritable, the holders paying rent to Government at fixed rates."[3]
115	*Sud-barna* ...	See No. 52, *ante*.
116	*Sadua patua* ...	See No. 122, *post*.
117	*Taluks*— ... (1) Independent and dependent *taluks* and *talukdars*.	The word *taluk* is derived from the Arabic word *Alak*, which signifies "to hang from" to depend upon (*Alak* also means leech), and means connexion, dependence. In Upper India, a *taluk* was dependent upon, and subordinate to, the sovereign. In Bengal, the *taluk* was generally subordinate to the *samindari*, but not always. The larger *talukdars* were *husuri*, *i.e.*, they, were immediatelly under the Supreme Government and paid their revenue direct to Government, while the smaller *taluks* paid their revenue through a *samindar*, who was specified (*Mas-kuri*) in their *Sanads*.[4]

[1] Bengal Administration Report, 1901-2, page 98, para. 199.
[2] Galloway's India, p 76.
[3] Bengal Administration Report, 1901-2, page 97, para. 197.
[4] See Field's Regulations, page 30, note; see also, as to *taluks* and *talukdars*, *ibid*, pages 37 and 212 to 216, and Reg. VIII. of 1793, sections 6 to 8.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (*1*) Independent and dependent *taluks* and *talukdars*—(contd.)	*Taluks* which paid direct to Government before the Permanent Settlement, or which, having since become separated from *samindaris*, pay direct to Government, are independent *taluks*. They are estates within the meaning of the Bengal Tenancy Act, and the payments made for them to Government are revenue. The *Mas-kuri* or dependent *taluks* (also known as *Shikmi* from *Shikm*, the belly, are tenures, and the payments made for them to the proprietors are rents, which were formerly liable to enhancement only on proof of the conditions mentioned in clause (1), section 51, Regulation VIII. of 1793, which has been repealed by the Bengal Tenency Act, 1885. The liability of such tenures to enhancement of rent, and the limits of such enhancement, are now regulated by sections 7 to 9, *ante*, pages 80 to 84. High Court rulings as to *taluks*. The word *taluk*, it was said in a High Court decision, *primâ facie* imports a permanent tenure.[1] Lands situated within a *samindari* are *primâ facie* to be considered as part of the *samindari*, and it is for those who insist on the separation of these lands from the general lands of the *samindari*, and on their settlement as a *shikmi taluk*, to establish their title. But the fact of a *shikmi taluk* not being mentioned in the Decennial or Quinquennial Settlement, and of the lands comprised therein being included in the Decennial Settlement as part of the *samindari*, for which the *samindar's* land-revenue was assessed, does not afford any very strong evidence against the existence of such a *taluk*. If a *taluk* was only a *shikmi taluk* paying rent to the *samindar*, the *talukdar* was not required to mention it, nor was it necessary for the *samindar* to do so. An independent *taluk* would be liable to direct assessment by the Government, and the revenue would have been assessed on the *talukdar*.[2]

[1] *Krishna Chandra Gupta* v. *Mir Jafar Ali*, 22 W. R., 327.
[2] *Wise* v. *Bhooban Moyee Debia* [1865], 10 Moore I. A., 174.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (1) Independent and dopndent *taluks* and *talukdars*—(contd.)—	*Onus* of proof that a tenure has been held from the time of the Permanent Settlement. The *onus* of proof that a tenure has been held from the time of the Permanent Settlement ordinarily lies on the tenure-holder who raises the plea,[1] but if it is found that a *taluk* is a dependent *taluk*, within the purview of section 51, Regulation VIII. of 1793, the burden is on the plaintiff *samindar* to show the rent is variable.[2] In a suit for enhancement of rent in respect of land which the defendant claimed to hold as a dependent *taluk*, it was held that the *onus* was upon the *samindar* to show that the land was included in the *samindari* at the time of the Permanent Settlement.[3] In the case just referred to, the question in issue was whether the lands in dispute did form part of the *samindari* when the Permanent Settlement was made; the plaintiff alleging that they did and the defendant that they did not. It was held that the burden of proof was on the plaintiff. But where the defendant admitted his tenancy, it was held that the *onus* was on him of proving that the tenancy was a permanent one at a rate which could not be altered.[4]
	(2) *Patni* ...	The *patni* tenure had its origin in the estates of the Raja of Burdwan, and was afterwards extended to other *samindaris*. The character of the tenure is that it is a *taluk* created by the *samindar* to be held at a rent fixed in perpetuity by the lessee and his heirs for ever (see the preamble to Reg. VIII. of 1819.) "A *patni taluk* is...heritable, capable of being transferred by sale, gift or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts in the same manner as other immoveable property. A *patni taluk* is not liable to be cancelled for default in payment of the rent thereof, but the tenure may be brought to sale by public auction, and the defaulting *patnidar* is entitled to

[1] *Gopal Lall Tagore* v. *Tilluck Chunder Rai* [1865], 3 W. R., P. C. I.
[2] *Bamasoondaree Dossee* v *Radhika Chowdhrani* [1869], 13 W. R., P. C. (11).
[3] *Assanullah* v. *Basarat Ali Chowdari* [1884], I L. R., 10 Cal., 920.
[4] *Khetter Kristo Mitter* v. *Kumar Dinendra Narain Rey* [1897], 3 C. W. N., 202.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (2) *Patni*—(contd.)	any surplus proceeds of sale beyond the arrears of rent due thereupon. A *patni talukdar* is entitled to let out the lands composing his *taluk* in any manner most conducive to his interest, and any engagements entered into by such *talukdar* with others are legal and binding between the parties to the same, their heirs and assignees : provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the *patni taluk* answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant, the *patnidar*.[1] The effect of a sale of a *patni* for arrears is not *ipso facto* to cancel incumbrances created by the defaulter, but to render them voidable if the purchaser wishes to avoid them.[2] The only incumbrances that are voidable are those created by the defaulting *patnidar*. A purchaser is not entitled to collect rent at a higher rate than was demandable by his predecessor, without establishing his right to do so.[3] For other incidents of *patni* tenures, see Field's Regulations, pp. 512-521. For a full account of the incidents of *patni taluks*, see Field's Digest, Articles 26 to 29, and Filed's Regulations, pages 491 to 521 and cases cited therein. Nothing in the Bengal Tenency Act affects any enactment relating to *patni* tenures, so far as it relates to those tenures—see section 195, clause (*e*), *ante*.
	(3) *Taluks* and *tarafs* in permanently-settled estates of Chittagong.	The Chittagong District is partly permanently-settled and partly temporarily-settled. Temporarily-settled and permanently-settled lands are intermixed. The owners of permanently-settled estates are known locally as *tarafdars*, and, have under them various classes of tenants, of which *talukdars* form one class. Mr. Allen, I.C.S., who recently made a record-of-rights and settlement of revenue and of rent of the temporarily-settled portion of

[1] Field's Digest, page 29, Article 26.
[2] Field's Regulations, page 503, foot-note, citing *Madhusudhan Kundu* v. *Ram Dhan Ganguli*, 3 B. L. R. 431.
[3] *Magaram Ojha* v. *Rajah Nilmonee Singh Deo* [1874], 21 W. R. 326.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (3) *Taluks* and *tarafs* in permanently-settled estates of Chittagong—(*contd.*)	the district, and a survey and record-of-rights of the permanently-settled portion of it, describes *tarafdars* and *talukdars* in the permanently-settled portions thus :— "The first settlers naturally occupied the most convenient spots in the vicinity of the port, each family or group of families making its own clearance in the neighbourhood of the huts in which it obtained shelter. As the family increased in numbers in course of time, more jungle would be cleared, but each oasis so reclaimed would remain more or less isolated and surrounded on all sides by impenetrable jungle. Clearance of the jungle by immigrants from Bengal. Each such clearance is known in local parlance as a *taluk*, and it is of importance to remember that the *taluk* is the unit of every description of landed property in the district, and ..the estates (*tarafs*) were formed by grouping already existing *taluks* into one property. These properties were created by the Mohamedan Government between 1666 and 1760, with the object of establishing middlemen to collect revenue from the *talukdars*. The *talukdar* is, and has always been, the person with the direct interest in the land; the *tarafdar*, or proprietor, on the other hand, was originally a mere revenue collector from *talukdars* of his *taraf*."[1] The *taluk* the unit of landed interests. "The unit of each *taraf* was the settler's clearance, known as a *taluk*. and the *tarafdar* was the middleman between the central Government and the *talukdars*, who collected the revenue from them and paid a portion of it to the Government. But, inasmuch as the bulk of the district was as yet covered with dense forest, and what cultivation there was lay scattered about in small clearances, which were mere oases in a desert of jungle, it followed that the *taraf* or estate was itself only an aggregate of such scattered clearances. Such *tarafs* were usually called after the name of the original grantee; and, as the settlers were many and scattered all over the district, and, as the number of persons in a position to take The *taluk* formed the unit of the *taraf*.

[1] Chittagong Settlement Report, page 52, para. 157.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (3) *Taluks* and *tarafs*, *&c.*—(contd.)	up such grants was limited, it happened that one *tarafdar* would acquire clearances in many parts of the district. And such *taluks* or collections of *taluks* would change hands from time to time by sales, so that the most powerful men would get a large number of them into their hands."[1] "The *talukdars* are, many of them, the direct descendants of the original reclaimers of the soil. In *permanently-settled* estates the *taluks* are held at fixed rates of rent in perpetuity, and are heritable and transferable and saleable under Regulation VIII. of 1819. The *talukdar's* title was based generally on reclamation of waste and clearance of jungle. It was not the creation of a contract, but originated in prescription. The *talukdar* occupied his *taluk* first, and obtained formal settlement of it later, so that his title arose from occupancy, and was only ratified by the lease subsequently obtained from the *tarafdar*. In his relations with the *raiyats* under him the *talukdar* is by no means to be regarded as a mere middleman. He is something very much more than this, for it is the *talukdar* who originally brought the *raiyats* upon the land, who was the capitalist, and who was responsible for the success or failure of the enterprise of reclamation. It is of course impossible to take a bird's-eye view of all the various types of *talukdar*. There are many who have purchased the title from other *talukdars*, and who have no actual interest in the land beyond the right to collect rent from the *raiyats* holding the land at fixed rates in perpetuity. There are many again who have sublet to middlemen and are in similar case. But the above description applies to the *talukdars* as a class."[2]
	(4) *Noabad tulukdars of* Chittagong.	The term *noabad* (newly cultivated) has long been used in Chittagong to denote lands in which the proprietary interest vests in the State, that is to say, all lands which have not been permanently-settled. The *talukdars* in these lands, who are known as *noabâd talukdars*, are described by the Settlement-officer thus:—

[1] Chittagong Settlement Report, page 53, para, 163.
[2] *Ibid*, page 27, para. 77.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
117	*Taluks*—(contd.) (4) *Noabad Taluks*—(contd.)	"The *noabad talukdar*, though generally a *talukdar* of the class described above, is not invariably so. He is sometimes a grantee of a large tract of land, in which case he belongs to the proprietary class of the population, although he is *de jure* a tenure-holder subordinate to the Government in its capacity as proprietor of all the *noabad* lands. There are several *taluks* in the Cox's Bazar sub-division which extend to the greater part of an entire village, and pay a revenue of several thousands of rupees. Again, many of the *noabad taluks* were created during the 1848 Settlement from excess lands separated from permanently-settled estates, and these *taluks* were settled with the proprietors of the parent permanently-settled estates, so that these *noabad talukdars* also belong to the proprietary class. In such cases the original *talukdars*, who held the separated *noabad* lands as appertaining to their *taluks* under the permanently-settled estate, became *dar-talukdars* or *itmamdars* (under-tenure-holders) of these lands in name, but nevertheless for all practical purposes retained their status as *talukdars*."[1]
		The *noabad talukdars* are permanent tenure-holders within the meaning of the Bengal Tenancy Act, holding under Government as proprietor, but they are not entitled to hold at fixed rates.[2] Their tenures are transferable and heritable.
	(5) *Talukdars* in Tippera and Noakhali.	Mr. Cumming, I.C.S., who has recently made a record-of-rights of the Chakla Roshnabad Estate in the Tippera and Noakhali districts, says the word *taluk* does not, in the Roshnabad estate, connote anything as to fixity of rent. Unless there be a prefix, such as *kaimi*, *mukarrari*, *mushakhasi*, *patni*, and so on, the word *taluk* alone expresses a tenure variable in rent. It is also heritable and transferable.[3]
	(6) *Agat, bandobasti, dar, dar-agat, kat, kat-agat, khas,*	Mr. Cumming writes :— "*Agat taluk, dar-agat and kat-agat taluk.*—The original *agat talukdar* at the end of the last century was a small *talukdar* who preferred to

[1] Chittagong Settlement Report, page 27, para 78.
[2] *Prosunno Coomar Roy* v. *The Secretary of State for India in Council* [1899], I. L. R., 26 Cal. 792.
[3] Tippera Settlement Report, page 31, para. 54.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
	miyadi and *osat taluks.*	place himself under the wing of a big *talukdar* to escape interference from the *zamindar's* agents. He thus in modern language ceased to be a tenant of the proprietor. Then the big *talukdar* became the tenant responsible for the rent of the area of both *taluks.* But this was really not an *agata taluk*, but a *gata taluk.* The *agata taluk* signifies what has come from a *taluk.* The holder of such is in the same position to the *talukdar* and the proprietor as the purchaser of portion of the land of a settled *raiyat* is to the *raiyat* and the *raiyat's* landlord. That is to say, the *agat talukdar* is a recognized local tenure, but it is not a tenure under the Bengal Tenancy Act. Mr. Mitra, my predecessor, examined the nature of *agat taluks* closely from a legal point of view, and he came to the conclusion, in which I share that the *agat talukdar* is not subordinate as a rent-paying tenant to the *talukdar*, but is merely an offshoot of the *talukdar*, and co-equal with him in responsibility to the proprietor to the extent of his share of the rent. The record of *taluks* and *agats* has been prepared on this principle; and thereby the *talukdar* is liable for the assets of all the offshoots. Opportunity was given, both by the Special Judge and myself, during the settlement of rents for this view to be challenged by the parties; but it has not been done. I mention this because in the past some Munsifs have treated the *agatdar* as the *talukdar's* tenant, which is incorrect: the *agatdar* should be sued in a contribution suit..... *Abadi taluk* is the same as *jangalburi*..... The terms of such *taluks* are that it be assessed at progressive rates and ultimately on all cultivation up to some rate, such as Rs. 5 a *drone.* ..... *Miyadi taluk.*—A *taluk* at a variable rent for which successive settlements must be made. The proprietor may refuse to make a fresh settlement with the former holder. *Kat taluk.*—A taluk subordinate to a *dar taluk.* *Bandobasti.*—Similar to a *miyadi* taluk. *Osat taluk.*—Similar to a *dar taluk.*
	(6) *Agat, bandobasti, dar, dar-*	*Dar taluk.*—This term has now a double meaning. The number of real *dar-talukdars, i.e.*, under

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
	agat, kat, kat-agat, khas, miyadi and *osat taluks*—(contd)	tenure-holders to *talukdars*, is minutely small. There are, however, a number of tenures which hold under the proprietor as the auction purchaser for arrears of rent of the rights of the *talukdar*. Such tenure-holders took settlement exactly like any other *talukdar*; but they are entered *dar-talukdars* in the landlord's papers. This kind of settlement arose from the desire of the proprietor to retain some property in land if it should ever occur that his *zamindari* rights should be sold up for arrears of Government revenue. *Khas taluk.*—This is a *taluk* purchased by the proprietor and held under direct management."[1] See also No. 40, *ante*.
118	*Tanki* tenures ...	The Orissa Settlement-officer describes these tenures thus:— "In addition to the revenue-free properties found in existence at the Settlement of 1838, there were numerous tenures held at a quit rent or *tanki* of one to three rupees per *bati*. They consist of both *brahmottar* and *debottar* land, and were generally held by Brahmans who enjoyed, subject only to the payment of the trifling rent, all the privileges of *lakhirajdars*. It is commonly asserted that these tenures were originally rent-free and were assessed by the Rajas when they were hard up for money, or by the *Moghuls* and *Mahrattas*.... The tenures were at the British conquest paying a quit rent, and at the last Settlement [of 1838] their title to refuse enhancement was inquired into on exactly the same lines as were claims to hold land revenue-free, the most marked difference being that with but very few exceptions no *tanki* tenure, resumed or confirmed, was made into a separate estate. In the resumed or *tanki bazyafti* tenures the rents were fixed nominally at half rates, the proprietor through whom it was paid getting 10 per cent. for the cost of collection. The position of these tenure-holders is exactly the same as that of the *lakhiraj bazyaftidars*..... The *tanki bazyaftidars* whose tenures were confirmed hold and will continue to hold at the quit rent they were found to be paying at the time of the

[1] Tippera Settlement Report, page 32.

APPENDIX IV.—(*contd.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidets of tenures, etc.
118	*Tanki tenures*—(contd.)	conquest. They are permanent tenure-holders having a heritable and transferable right, and can sell or mortgage the whole or any part of their tenure and exercise over it all other proprietary rights, subject to the general limitations to the treatment of trust lands where the land was granted for the support of a religious or charitable institution. They cannot however divide the rent without the consent of the landlord, and for failure to pay the rent the tenure is liable to be sold up under section 105, Act X. of 1859."[1] *See* also No. 11, *ante.*
119	*Tarafs* ...	See No. 117, *ante.*
120	*Thanadari chakran.*	See Nos. 21 and 110, *ante.*
121	*Thani raiyats* ...	See No. 98, *ante.*
122	*Thika, sarpeshgi, sadua patua.*	A *thika* is a farming lease for a term of years. A *sarpeshgi* is a usufructuary mortgage. A *sadua patua* lease is one in which there is a *sarpeshgi* loan which liquidates principal and interest by deductions from the yearly rent payable to the *maliks.* A *kara sarpeshgi* lease is one in which only the interest is payable yearly (a deduction from the rent) and the principal is repayable at the end of the term.[2] It has been held by the Privy Council that a *sarpeshgi* lease is not a mere contract for the cultivation of land, but is security to the tenant for his money advanced. The tenant's possession is, in part at least, that of a creditor, operating to pay himself, and is no foundation for a claim for occupancy-rights.[3] It is only where the contract is merely for the cultivation of land that a deed which might be called a *sarpeshgi* would create a *raiyati* interest.[4]
	Thika ...	See also No. 80, *ante.*
123	*Tinkathia patti dehai.*	See No. 7, *ante.*

[1] Orissa Settlement Report, Vol. I, page 211, para. 311.

[2] Muzaffarpur Settlement Report, page 341, paras. 880 to 882.

[3] *Bengal Indigo Co.* v. *Roghobur Das* [1896], I. L. R., 24 Cal. 272; distinguished at page 141 *ante* section 21 (*10 C. W. N. 351*).

[4] *Ram Khelawan Roy* v. *Sambhoo Roy* [1898], 2 C. W. N., 758; distinguished at page 141 *ante* section 21 (*10 C. W. N. 351*).

APPENDIX IV.—(*concld.*)

LIST OF SOME OF THE TENURES, UNDER-TENURES AND *raiyati* HOLDINGS IN LOWER BENGAL, BIHAR AND ORISSA—(*contd.*)

No.	Names of tenures, etc.	Description and incidents of tenures, etc.
124	*Upanchaki* ...	"In Rangpur a permenent t enure is found which is called *upanchaki*. It is a perpetual holding for religious services at a nominal quit-rent, and is hereditary and transferable. If liable to enhancement of rent, it is distinguished as *maskuri*."[1]

[1] Bengal Administration Report, 1901-2, page 97, para. 197.

APPENDIX V.

PART I.—*Rules framed under the Bengal Tenancy Act, 1885, by the Government of Bengal.*

[*As modified by Subsequent Legislation.*]

NOTIFICATION.

No. 2705T. R.—The 31st October 1907.—In exercise of the power conferred upon him by sub-section (*2*) of section 61, section 134, and section 189 of the Bengal Tenancy Act, 1885 (VIII. of 1885), the Lieutenant-Governor is pleased to direct that the following revised rules under the said Act, which, subject to the modifications now made therein, were published, in accordance with the provisions of sub-sections (*1*), (*2*), and (*3*) of section 190 of the said Act, at pages 1371-1398 of the *Calcutta Gazette*, Part I., of the 7th August 1907, shall be substituted for the like rules, which were published with the Notification dated the 21st December 1885, at pages 1255-68 of the *Calcutta Gazette*, Part I., dated the 23rd idem, as subsequently added to, modified or altered up to the date of this notification.

E. A. GAIT,

Offg. Chief Secy. to the Govt. of Bengal.

CHAPTER I.—GENERAL.

Regard to be had to instructions of Board of Revenue.

1. In carrying out the following rules, Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII. of 1885.

Supervision and control by Board of Revenue.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the proceedings and orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to

whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

Board's Instructions.

Under this rule, Assistant Superintendents of the Survey Department appointed to be Revenue-officers are declared to be subordinate to Deputy Superintendents of the Survey Department appointed to be Revenue-officers. Assistant Settlement Officers are declared to be subordinate to Settlement Officers, and Settlement Officers are declared to be subordinate to the Director of Land Records for administrated purposes only, or to the Commissioner, or Collector, as the Board shall, in each case, direct.

Service of notice where mode not prescribed by the Act or these rules.

3. Where no other mode of service of notice is prescribed by the Bengal Tenancy Act or by these Rules, service shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure; and, if it is addressed to a number of persons occupying or owning different holdings in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, *or* by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village-office, if any, where the rent is usually paid.

CHAPTER II.—STAPLE FOOD-CROPS AND PRICE-LISTS.

Local areas.

4. *Section 39 (1).*—The local areas under sub-section (1) of section 39 shall be those entered in Schedule II. annexed to these rules, and the mart specified in the same Schedule for each local area shall be that at which prices shall be recorded.

Specification of food-crops by Collector for each local area.

5. *Section 39 (7).*—The Collector, after such enquiry into the relative extent to which particular food-crops are grown in his district, as he may think necessary, shall cause a notice to be affixed in his office, and in the sub-divisional office, specifying the food-crop or

food-crops which, in his opinion, is or are most extensively grown in each local area.

The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands, and shall fix a day, not being later than fifteen days after the publication of such notice, on which objections will be taken into consideration.

On the day so fixed, the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice; and shall report his opinion thereon to the Board of Revenue.

The Board of Revenue shall submit the Collector's opinion to the Local Government, with such remarks as may seem to them necessary.

The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

Until further orders, the crops shown in column 3 of Schedule II. hereto appended shall be deemed staple food-crops for the purposes of section 39.

Dates for preparation of price-lists.

6. Price-lists of staple food-crops shall be prepared on one market-day in the month at intervals of not less than twenty days. This market-day shall be selected by the Collector subject to the control of the Board of Revenue.

Method of determining prices.

7. The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the day selected under the last preceding rule.

Board's Instructions.

Under this rule, the price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart, to which the price-list refers, on the day prescribed in rule 6 of the rules issued by Government :—

(*a*) The price recorded should be the average of the prices of the different qualities of the staple crop.

(*b*) The price should always be given in *seers* of 80 *tolas*, standard weight, per rupee.

(*c*) Care should be taken that the price of the staple crops *grown* in the locality is taken into account, and not of those *imported*.

(*d*) When rice is the staple, the price to be recorded is the average of the common qualities of husked rice (*mota chaul*) as distinguished from paddy, consumed for the time being by the middle and poorer classes.

(*e*) The average price of the various kinds of *aman* should be shown throughout the year, and that of *aus* separately during the months in which it is sold.

(*f*) The price of *old* and *new* crop should be shown separately when both are being sold at the mart.

Price-lists by whom to be prepared.

8. (*1*) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But, in special cases where a Sub-Deputy Collector is not available, the Collector may authorize a *kanungo* to prepare the lists.

(*2*) Where prices are recorded at marts, other than those at the head-quarters of districts, the Collector may, with the sanction of the Commissioner, authorize a Sub-Registrar to prepare the lists on days when no gazetted officer or *kanungo* is available.

(*3*) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-lists, and the list shall be signed by at least one of them as well as by the officer preparing it.

Record to be kept by officer preparing price-lists.

9. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(*a*) the date of his visit to the mart at which prices are to be recorded;

(*b*) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

Board's Instructions.

The record prescribed to be kept up with the officer charged with the preparation of price-lists under this rule should also contain entries showing the vernacular names of the description of rice and the qualities of the other staples from time to time, so as to afford a basis for comparison with the qualities and price which may be recorded at any future time, and also in order that, whenever a change occurs in the officers charged with the

preparation of these lists, the new officers may have the means of ascertaining the qualities of the staples selected by his predecessor.

Scrutiny and countersignature of price-lists prepared by subordinate officer.

10. When price-lists are prepared at the *sadar* sub-division by an officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-divisional Officer, or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector, or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Sub-divisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanation, and cause manifest errors to be corrected, and, having satisfied himself of the accuracy of the lists, he shall countersign them.

Publication of price-lists.

11. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or Sub-divisional Officer's offices and at every police-station and munsifi in the local area.

Board's Instructions.

The lists shall be published under this rule in the form subjoined:—

PRICE-LIST for month of 19 , for local area , sub-division , district , is published under clause (3) of section 39 of the Bengal Tenancy Act, 1885 (VIII. of 1885).

Any objections which any landlord or a tenant of the aforesaid local area may have to any entry in this list should be presented to the Collector in writing within a month from the date of its publication:—

Staple food-crop.	Number of *seers* of 80 *tolas* sold per rupee.	REMARKS.

District

Sub-division

Collectorate

Dated 19.

Signature of the officer preparing the list

Rank

Submission of price-lists to Board.

12. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers, who prepared and countersigned them, and of the Collector, on such objections.

Board's Instructions.

(*a*) The lists shall be submitted to the Board in the following form:—

Price-list for the month of _____ *191*

District _____

Local area _____

Mart _____

Staple food-crop or crops.	Number of *seers* of 80 *tolas* standard weight per rupee.	Substance of objections,[1] if any.	Opinions of the officer who prepared the list, and of the officer who examined it under rule 10, and of the Collector, on such objection.	REMARKS.

[1] Any objections made to this list must be forwarded with it.

Signature of officer who examined the list under Rule 10 _____

Rank _____

Date _____

Signature of officer who prepared the list _____

Rank _____

Date _____

(*b*) Whatever the dates fixed for recording prices in local markets may be, the lists should be submitted to the Board of Revenue immediately after the expiry of one month from the date of their publication in the mart to which they refer.

(c) In submitting the lists to the Board, the recording officer should invariably explain in the column of remarks causes of variation in prices quoted during the period under report as compared with the last preceding return. The Collector should, after satisfying himself as to the correctness of this statement, initial it. The Collector should, in submitting the lists for the whole district, explain any marked difference between prices ruling in the several local areas of his district.

CHAPTER III.—LANDLORDS' IMPROVEMENTS.

[*No. 360 T. R.—The 9th May 1910.*]

Application for registration of improvements to whom to be presented.

13. *Section 80.*—An application for the registration of landlords' improvements may be presented to the Collector of the district, or to the officer in charge of the sub-division, in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be specially appointed by Government to receive such application. The application shall, as far as practicable, be in the form (Form 1) specified in Schedule I. appended to these rules, and the requisite information shall be submitted, along with the application, in the form of List A, appended to the said Form 1.

13A. Alternative methods of filling up columns 12 to 16 of List A are provided. The first method is intended for cases in which only a small number of holdings are benefited, and the second for cases in which the whole village or a considerable proportion of the holdings is benefited. It will be open to the applicant, in the first instance, to select the method which appears to him more appropriate; but, if he selects the second method, the Revenue-officer may, if he thinks fit, require List A to be filled up in the first method. If the Revenue-officer admits the application, he will at the same time pass orders to the applicant to submit notices in Form 19 on tenants or villages concerned, in sufficient number to meet the requirements of these rules.

14. The officer receiving the application may either reject the application under section 80 (*3*), or may admit it. If the application is admitted, a local inquiry will be held. A date will be fixed for that inquiry, and the applicant or his agent will be informed of this date. Notices in Form 19 will be sent to the tenants (if any) whose names are entered in column 12 of List A. In addition a notice in Form 19 will

be served in each village concerned. In this notice will be specified the date and approximate hour when the enquiry will be held in that village, and the tenants concerned therein will be directed to attend the inquiry. The notice will be published locally by proclamation and beat of drum, and will be fixed up in the presence of not less than two persons in some conspicuous place in the village. The service of the notice must be attested by at least two residents of the village (or, in the case of a *bechappar* village, of a contiguous village) on the back of the duplicate notice. Special care must be taken to ensure that with each notice is appended a correct copy of List A or the extracts therefrom, which refer to the village or tenant addressed in the notice.

The expense of sending and publishing notices under this rule and under rule 16 shall be borne by the applicant.

15. The Collector or Sub-divisional Officer who received the application may transfer the case to the file of another officer empowered to receive such applications. If it is not so transferred, he may either make the local inquiry himself, or he may direct it to be made by an officer not below the rank of Sub-Deputy Collector. When the officer who receives the application is not the Collector or a Sub-divisional Officer, he may, in a similar manner, transfer the case, or direct a local inquiry with the consent of the Collector or Sub-divisional Officer. This local inquiry will be held on the day and time specified in the notice. Such of the parties and their witnesses as attend, and may desire to give evidence, shall be examined, and such inspection of the land concerned as is considered necessary shall be made. In the record of this inquiry, it shall be clearly stated which of the tenants were examined; and if any offered themselves for examination, and were not examined, their names and the reasons for not examining them shall be recorded. The inquiring officer must make an inquiry in each village the lands of which are affected by the improvement.

Further inquiry, if any and disposal of the case.

16. The officer who has received the application shall then either forthwith, or, if further inquiry is necessary, after giving notice of such further inquiry to the parties concerned, and holding such inquiry, or causing it to be held by an officer not below the rank of Sub-Deputy Collector, who is empowered to receive such application, proceed to pass orders on the case.

17. In passing orders, he shall decide *inter alia* whether the improvement is of such a nature as to come within the meaning of section 76 of the Bengal Tenancy Act or not; whether the landlord is entitled to register it; whether it falls under sub-clause (*e*) of that section, and, if so, whether any enhancement of rent is being paid for the original improvement; and whether the cost of improvement and the date of completion have been correctly stated in the application.

Circumstances to be taken into consideration in disposing the case.

18. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect till confirmed by the Collector.

Confirmation of order of refusal passed by officer lower in rank than Collector.

19. *Section 81 (1).*—Evidence relating to any improvement under sub-section (*1*) of section 81 shall be recorded by the Revenue-officer specified in rule 13, who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Code of Civil Procedure.

Powers of officer recording evidence as to improvement.

CHAPTER IV.—RECORD OF PROPRIETORS' PRIVATE LANDS.

20. *Section 118.*—Applications under section 118 may be made to the Collector of the district, or to the officer in charge of the sub-division in which the land in question is situated, or to any Assistant or Deputy Collector specially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

Application for record of proprietors' private land, to whom to be made.

21. The application shall be signed by the party making it, and shall contain the following particulars, so far as the applicant is able to furnish them:—

Signature of, and particulars to be contained in, application.

(*a*) the name, tauzi number, and Government revenue of the estate;

(*b*) the names of the registered proprietors, and the share held by each;

(*c*) the specification of each plot of land referred to in the application, showing the village in which it is situated, and the area and boundaries of each plot, if known;

(*d*) the names of the tenants (if any) in occupation of each such plot; and

(*e*) the grounds of the application.

Inquiry on receipt of application.

22. On receipt of the application, the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

Measurement of lands where necessary, and deposit of cost thereof.

23. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or, if for sufficient reason, a further measurement is considered desirable, the officer shall order the lands to be measured, and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition-cases, and shall require the applicant to deposit the amount, either at once, or in such instalments as he may deem fit.

CHAPTER V.—SERVICE OF NOTICES.

Contents of notices under sections 12, 13, 15, 18.

24. *Sections 12, 13, 15, and 18.*—Notices under sections 12, 13, 15, and 18 shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I. (Forms 2 to 7).

Board's Instructions.

Notices received by the Collector from the Registering Officers or from the Civil Courts will be accompanied by *chalans* (either the originals or the duplicates), and, when issuing notices to the landlords, the Collector should see that they always bear the number of the Treasury *chalan* with which the fees are deposited.

Manner of service.

25. (*a*) Where there is a sole landlord, or where two or more persons are joint landlords, and have a common agent such as is referred to in section 188, or a common manager appointed under section 95, the notices shall be served on such sole landlord or his agent, or on such common agent or manager, as the case may be.

(*b*) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint landlord.

26. In each case under the preceding rule, the notice shall be forwarded by post, in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898), and an acknowledgment obtained. **Posting of notice.**

27. In the cases mentioned in rule 25 (*a*), the landlord's fee shall be transmitted by money-order to the sole landlord or his agent, or to the common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I. **Transmission of landlord's fee by money-order.**

28. If, in cases where the amount of landlord's fee is transmitted by money-order, the sole landlord or his agent or the common agent or manager refuses to accept payment thereof, and, in all other cases, where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and, on the expiry of that time, it shall be forfeited to the Government. **Deposit of fee, where there is refusal or no application.**

Board's Instructions.

Instead of making separate application for refund in the case of a cash deposit, the landlord, when there is more than one deposit relating to the same month, may in one petition apply for payment of items up to the limit of twenty.

The petition should, however, bear the court-fee stamp[1] that would have been levied for as many separate applications as the number of items covered by the single petition.

The landlord is required to file, with the application for refund, the notices served upon him by the Collector appertaining to the items to be refunded.

29. The Collector or any other officer who signs the order for the notice to be served shall satisfy himself that the landlord's fee and other fees and charges realized in cash have been paid into the treasury. **Verification of payment.**

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[1] Applications or claims for the refund of landlord's fees held in deposit are liable to court-fee, under both clauses (*a*) and (*b*) of article 1 of Schedule II. of the Court Fees Act, of one anna when the amount claimed is less than Rs. 50, and of eight annas in other cases. When, however, the amount claimed does not exceed Rs. 25, and the application is made within three months of the date of the deposit under Government of India's Notification No. 849, dated the 16th February 1883, published on page 122 of the *Gazette of India* of the 17th idem, no court-fee is required—*vide* Board's Circular Order No. 2 of June 1894.

Process-fee under section 12 (2). Added by Notification No. 4606 L.-R. of 24th November 1908.

29A. When the tenancy is held under a single landlord, or under two or more landlords having one common agent or a common manager, such as is referred to in rule 25 (*a*), the process-fee to be paid under sub-section (*2*) of section 12 shall be 12 annas, inclusive of the cost of posting the notice referred to in sub-section (*3*) of section 12 of registering it under the Indian Post Office Act, 1898, and of obtaining an acknowledgment of its receipt.

When the tenancy is held under two or more landlords not having one common agent or common manager, the said process-fee of annas 12 shall be paid in respect of the original notice in Form 3, and a further process-fee of four annas shall be paid in respect of each landlord or group of landlords having a common agent or a common manager on whom the service of a special notice is required by rule 25 (*b*).

Filing and service of agreements under section 46 (*2*).

30. *Section 46* (*2*).—The agreement under sub-section (*2*) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the *raiyat* in the manner prescribed for the service of summons on defendant under the Code of Civil Procedure on payment of the fee prescribed by the High Court.

Filing and service of notice under section 46 (*4*).

31. *Section 46* (*4*).—The notice under sub-section (*4*) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process-fee prescribed by the High Court.

Service of notice of receipt of deposit in cases (*a*), (*b*), and (*d*) of section 61.

32. *Section 63* (*2*).—In cases (*a*), (*b*), and (*d*) of section 61 referred to in sub-section (*2*) of section 63, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898), or where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

Publication of general notice under section 72 (*2*).

33. *Section 72* (*2*).—The general notice referred to in sub-section (*2*) of section 72 may be published by the transferee by fixing up a written notice to the tenants in the village-office, or in the presence of not less than two persons in some conspicuous place on the lands and, by proclaiming to the tenants by beat of drum, in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee.

The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the proces-fee prescribed by the High Court.

Notice under section 73.

34. *Section 73.*—Notice under section 73 shall be in writing, and shall be delivered to the landlord or his agent, or, where two or more persons are joint landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village-office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (*2*) of section 54. When there are two or more joint landlords without a common agent or manager, the notice shall be served at the village-office of the principal co-sharer or at such other places as may be appointed by each of the landlords for payments of rent under sub-section (*2*) of section 54.

Service of such notice through Civil Court.

35. The *raiyat* may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure on payment of the process-fee prescribed by the High Court.

Notice by raiyat of intention to surrender.

36. *Section 86 (2) and (4).*—If the *raiyat* elects to proceed under sub-section (*2*) of section 86, he may personally serve a written notice of his intention to surrender on his landlord; but, if he elects to proceed under sub-section (*4*) of the said section, the notice of the *raiyat's* intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process-fee prescribed by the High Court.

Notice by tenant of intention to abandon.

37. *Section 87.*—A notice of the tenant's abandonment of his holding under sub-section (*2*) of section 87 shall be in the form (Form 8) contained in Schedule I., and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling-house, or tree, or other conspicucus object upon the holding. The fee payable by the landlord shall be Re. 1.

Notice to tenant under section 155.

38. *Section 155.*—Notice to the tenant under section 155 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the fee prescribed by the High Court.

Notification of incumbrances to landlord.—Added by Revenue Circular No. 19, May 1909, after due publication in Gazette.

38A. (1) When a tenancy is held under a single landlord, or under two or more landlords having one common agent or common manager, such as is referred to in rule 25 (*a*), a copy of the instrument referred to in section 176 shall be served on such landlord, or on such agent or manager, as the case may be.

(2) When a tenancy is held under two or more landlords not having one common agent or common manager as aforesaid, a copy of the said instrument shall be served—

(*a*) if none of them have one common agent or common manager as aforesaid, then on each landlord, or,

(*b*) if some of them have one common agent or common manager as aforesaid, then on such agent or manager, and also on each of the landlords who have no such agent or manager.

V. of 1908.

(3) The said copy or copies shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, 1908.

(4) The fee to be paid for such service shall be—

(i) in the cases referred to in sub-rule (1), one rupee; and,

(ii) in the cases referred to in sub-rule (2), one rupee for the first copy of the instrument, and four annas for each additional copy.

Particulars to be contained in requisitions by Civil Court for copies or extract of record-of-rights.

39. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the form (Form 9) in Schedule I. The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose.

CHAPTER VI.—THE PROCEDURE TO BE FOLLOWED BY REVENUE-OFFICERS IN REGARD TO THE RECORD-OF-RIGHTS AND SETTLEMENT.

Powers vested on Settlement and Assistant Settlement Officers.

40. (*a*) Every Revenue-officer appointed by the Local Government under the designation of "Settlement Officer" or "Assistant Settlement Officer" for the purpose of making surveys, records-of-right, settlement of rents, determination of proprietor's private lands, and such like proceedings, or any one or more of them, under the Bengal Tenancy Act, 1885, is hereby vested with—

(*i*) all the powers excercisable by a Civil Court in the trial of suits;

(*ii*) powers to enter upon any land, and to survey, demarcate, and make a map of the same;

(*iii*) all the powers of an Assistant Superintendent of Survey and a Deputy Collector under the Bengal Survey Act, 1875; and

(*iv*) power to cut and thresh the crops on any land, and weigh the produce with a view to estimating the capabilities of the soil, and

(*v*) power to take down evidence with his own hand in the English language, in proceedings held under Chapter X. of the Bengal Tenancy Act, 1885, in which an appeal is allowed in accordance with the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits.

Added by No. 2242 T. R. dated the 28 October 1910.

(*b*) A Revenue-officer who, under the designation of "Settlement Officer," has been appointed by the Local Government for the purpose of making a survey and record-of-rights and settlement of rents under Chapter X. of the Bengal Tenancy Act, 1885, shall have power, by general or special order, to make over for disposal to any officer subordinate to him (who has been duly empowered, under the designation of Assistant Settlement Officer, to act as a Revenue-officer under the provisions of the same Chapter of the same Act),—

(*i*) objections preferred under section 103A,

(*ii*) the settle ment of fair rents (including the preparation of a table of rates),

(*iii*) the preparation of a settlement rent-roll under Chapter X., Part II., of the Act in any area,

(*iv*) applications for the settlement of fair rents under section 105,

(*v*) suits instituted for the trial of disputes under section 106, and

(*vi*) applications for the communication of rents under section 49.

(*c*) A Revenue-officer so appointed under the designation of Settlement Officer shall, on the application of any person interested and after giving notice to other persons interested, and hearing any objections preferred, or of his own motion without giving such notice, have power to withdraw from the file of any Assistant Settlement Officer subordinate to him, any of the matters specified in rule 40 (*b*) above, and to dispose of them himself, or to transfer them for disposal to any other Assistant Settlement Officer subordinate to him who has been duly empowered to act as a Revenue-officer.

(*d*) On the application of either party to a suit under section 106, after giving notice to the other party and hearing any objections preferred, or of his own motion without giving such notice, a Revenue-officer so appointed under the designation of Settlement Officer may transfer to such competent Civil Court as the District Judge may designate the trial of a suit, or of any class of suits, instituted for the decision of a dispute or disputes which involve important and complicated questions of right and title or claims to be put in possession.

(*e*) In the case of an uninhabited village, any general notice to be served or publication to be made under the rules in this Chapter may be served or made in any inhabited village contiguous to that village, or if there be no inhabited village contiguous to that village in the inhabited village nearest to that village, or in the village in which the tenants and occupants of the lands of the uninhabited village are believed by the Revenue-officer to reside.

Powers vested in Deputy Superintendents of Survey and Assistant Superintendents of Survey.

41. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules are hereby declared to be Revenue-officers for the purpose of performing any duty imposed upon them by these rules, or by instructions consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in sections 189 (*1*) (*b*), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act, 1875 (Ben. Act V. of 1875).

Procedure for Cadastral Survey, Records-of-rights, and Settlement of Rents.

Procedure for survey, record-of-rights, and settlement of rents.

42. The processes shall be—

A.—Demarcation of boundaries.

B.—Measurement.

C.—*Khanapuri, i. e.*, preliminary preparation of the record.

D.—Attestation of the record.

E.—Publication of the draft-record.

F.—Disposal of objections under section 103A.

G.—Settlement of fair rents in cases in which a settlement of revenue is being, or is about to be, made.

H.—Final publication of the record-of-rights.

I.—Distribution of copies of the record-of-rights to parties interested.

J.—The settlement of fair rents on the application of the parties under section 105, and the trial of suits for the decision of disputes under section 106 in cases in which a settlement of revenue is not being, or is not about to be, made.

K.—Correction of *bonâ fide* omissions or mistakes in the record-of-rights.

A.—Demarcation of Boundaries.

Demarcation of village-boundaries, and determination of the unit of survey and record-of-rights.

43. (*a*) In the demarcation of village-boundaries, the area contained within the exterior boundaries of the village-maps of the revenue-survey shall be preserved, as far as possible, as the unit of survey and record.

(*b*) Where there is no dispute, the boundary of the village according to possession shall be followed for the purposes of map and record.

(*c*) Where there is a dispute as to a village-boundary, the Revenue-officer shall decide the dispute under the Bengal Survey Act, 1875 (Ben. Act V. of 1875).

(*d*) Where the Settlement Officer is of opinion that the village maps prepared at the Revenue Survey are not suitable as the unit of survey and record, he shall issue notice of the inquiry to all parties concerned in the manner prescribed, and, after such local inquiry in

the presence of the parties as he may consider necessary, shall determine the area to be included in the village. He shall then submit his proceedings to the Board through such superior authorities as the Board may prescribe; and such area as the Board may, after such further inquiry as may be deemed necessary, declare to be included in a village shall be adopted as the unit of survey and record-of-rights:

Board's Instructions.

The Settlement Officer's report should be submitted through the Collector of the District to the Director of Land Records, Bengal, who will forward through the Commissioner of the Division to the Board. The Collector should report in each case whether the proposed change would be suitable for administrative purposes.

Provided that in all cases where the Revenue Survey village is not adopted as the unit of survey, the Settlement Officer shall draw up a statement, in such form as the Board may prescribe, showing the areas adopted as the unit of survey as compared with the areas contained in the village-maps of the Revenue Survey; and such statement shall be filed in the Collector's Office.

Board's Instructions.

The following form is prescribed by the Board :—

Name of Thana

According to Revenue Survey of 18 .			Villages adopted under Rules 43 (*d.*)				
Name of mauza.	Revenue Survey number	Area in acres according to Revenue Survey.	Name of village.	Thana Number.	Names in *tolas* comprised in village	Area in acres	Remarks
1	2	3	4	5	6	7	8

(*e*) Where no Revenue Survey maps have been prepared, the Revenue-officer appointed under the designation of Settlement Officer shall issue notice to all parties concerned in the manner prescribed, and, after such local inquiry in the presence of the parties as he may consider necessary, shall determine the area to be included in the village. He shall then submit his proceedings to the Collector, and such area as the Collector, after such further inquiry as he deems necessary, and with the sanction of the Board of Revenue, by general or special order, declares to constitute a village shall be adopted as the unit of survey and record-of-rights.

(*f*) In cases where the procedure prescribed in sub-clauses (*d*) and (*e*) have been adopted, the Board of Revenue shall submit a report to Government for issue of the notification prescribed by section 3 (*10*) (*b*) of the Bengal Tenancy Act.

(*g*) The notice under rule 43 (*d*) and (*e*) of the inquiry to be held shall be given by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, in some convenient place or places in the lands to which it refers.

Erection of boundary-pillars.

44. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the Revenue-officer considers it necessary to define by pillars the boundaries of estates or tenures, or of lands, which have been the subject of dispute.

B.—Measurements.

Field maps.

45. A field-map of every village shall be prepared. It shall show the boundaries of every field separately held, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

Board's Instructions.

The instructions of the Board are contained in rules 117 and 119 of the Bengal Survey Manual, 1908.

C.—Khanapuri, *i.e.*, *Preliminary Preparation of the Record.*

Documents to be prepared in course of survey and preparation of record-of-rights.

46. The following are the principal documents to be prepared in the course of a survey and the preparation of a record-of-rights under Chapter X. of the Bengal Tenancy Act, 1885:—

Village-map.	*Khewat.*
Khasra.	*Khatian.*
Parcha.	*Terij.*

These and any other papers prescribed by the Board of Revenue shall be prepared in such manner as the Board may prescribe.

Board's Instructions.

General instructions have been given in Chapter XI. of the Bengal Survey Manual, 1908, but special instructions in particul ar settlements may be issued with the approval of the Board.

Record-of-rights.

47. The record-of-rights, which shall be published under section 103A of the Bengal Tenancy Act, 1885, shall be contained in the *khewat* and the *khatian* and such other papers as may be specified by general or special order of the Board of Revenue in the case of any local area.

Proprietary khewat.

48. (*a*) The proprietary *khewat* shall show the character and extent of proprietary interests. It shall be first drawn up with reference to the registers maintained by the Collector under the provisions of the Land Registration Act, 1876 (Ben. Act VII. of 1876). As the record-writing proceeds, the proprietary *khewat* shall be altered in accordance with the facts of possession. The Settlement Officer shall, from time to time, under such instructions as the Board of Revenue may prescribe in this behalf, give information to the Collector of all alterations made in the *khewat*, and the Collector shall thereupon take action to make such corrections as may be necessary in his registers prepared under the Land Registration Act. If the Collector, after inquiry under the Land Registration Act, finds that any entry in the *khewat* is incorrect, a note shall be made in the *khewat* of his finding.

Board's Instructions:

The instructions have been incorporated in rules 249-252 of the Bengal Survey Manual, 1908.

(*b*) A *khewat* shall ordinarily be prepared to show the character and extent of the interest of tenure-holders, such of their interests as are of a *raiyati* nature being also recorded in the *khatian*.

Khatian.

49. (*a*) The *khatian* shall show in detail, for all the lands or the village, estate by estate, landlord by landlord, tenant by tenant, and occupant by occupant, the lands included in each estate owned by each landlord and occupied by each tenant or occupant, with particulars of rent and area, and of the incidents of each tenancy.

(*b*) Lands cultivated or otherwise held direct by the proprietor shall be shown in detail in the *khatian*, and shall be entered either as proprietor's private land within the meaning of section 120 of the Bengal Tenancy Act or as land held by the proprietor, but not private land, within the meaning of that section.

D.—Attestation of the Record.

Attestation.

50. (*a*) When the map, *khasra*, *khewat*, and *khatian* for a village have been prepared in the manner prescribed by these rules, and by instructions of the Board of Revenue consistent with them, the Revenue-officer shall issue a notification in the form (Form 10) given in Schedule I, fixing a day which shall be not less than a week from the date of publication of the notification, on which he will be present at some place to be specified at or near the village for the purposes of attesting and completing the record-of-rights.

Board's Instructions.

The usual practice should be to allow one month's interval between the date of issue of the notification and the commencement of attestation.

(*b*) The notification shall further state that, on the day so fixed, or on any other day to which the proceedings may be adjourned, the Revenue-officer will record rents and status, and deal with objections relating to entries in the record or omissions therefrom; and it shall require all parties interested in the subject-matter of the inquiry to attend at the time and place specified, with their *parchas*, and with such evidence as they have to offer in connection with the proceedings.

(*c*) Such notification shall be published by proclamation and beat of drum, and fixed up, in the presence of not less than two persons, in some conspicuous place in the village to which it refers.

Measures to procure attendance of parties.

51. The Revenue-officer may also, if he deem fit, take such additional measures under the powers conferred on him by rule 40, as he may deem desirable to procure the attendance, at the place specified in the notification issued under the last-preceeding rule, of the occupants, under-*raiyats*, *raiyats*, tenure-holders, landlords and proprietors, or their authorized agents.

Inquiry as to correctness of entries.

52. On the date specified in the notification issued under rule 50, or on any other date to which the proceedings may be adjourned, the entries which have been made in the *khewat* and in each *khatian* shall be read out in the presence of such of the interested parties as are in attendance.

If the correctness of any entry is questioned, the Revenue-officer shall dispose of the objection after local inquiry or otherwise:

Provided that, if the correctness of the measurement be objected to, and a fresh measurement be demanded, the Revenue-officer may require the cost of the re-measurement to be deposited.

If the measurement shows the original measurement to have been inaccurate, the amount deposited, or any portion of it, may, if the Revenue-officer thinks fit, be refunded to the objector.

Inquiry as to fixed rates or fixed rents.

53. The Revenue-officer shall ascertain what tenants claim the right to hold at fixed rates or fixed rents, explaining, as far as may be necessary, the provisions of the Bengal Tenancy Act, 1885, in this respect. If the right claimed is disputed by the landlord, the Revenue-officer shall call on the claimants for proofs of such right. It is sufficient for the claimant to establish the presumption mentioned in section 50 (2), and, if that presumption be not rebutted by the landlord, the claimant shall be recorded as a *raiyat* at fixed rates of rent, or a fixed rent, as the case may be.

Inquiry as to settled and occupancy raiyats.

54. The Revenue-officer shall ascertain which of the *raiyats* are settled *raiyats*, or occupancy-*raiyats*, as the case may be, and shall record them as such, having regard to the presumption of section 20 (7) of the Bengal Tenancy Act, 1885.

Inquiry as to non-occupancy raiyats.

55. The Revenue-officer shall ascertain what *raiyats* are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to produce a statement showing the names of the *raiyats* alleged by him to be non-occupancy *raiyats*. On the production of such statement, the Revenue-officer shall explain to the *raiyats* whose names are entered in the statement, and who have not already been recorded as

occupancy or settled *raiyats*, the nature of the presumption raised by section 20 (7) of the Bengal Tenancy Act, 1885. If, after such explanation, a *raiyat* admits himself to be a non-occupancy *raiyat*, he shall be recorded as such. If he does not admit himself to be a non-occupancy *raiyat*, the Revenue-officer shall call on the landlord to prove the allegation made by him in regard to such *raiyat*.

Abwabs and cesses.

56. *Abwabs* shall not be recorded. Cesses which are authorized by law shall be recorded separately from the rent in the *khatian*, or, in the case of tenure-holders, in the *khewat*.

Ascertainment and record of rent at present payable.

57. The Revenue-officer shall summarily ascertain the rent at present payable by the tenant, and record it in the appropriate column of the *khatian* as the rent payable in respect of the land held by the tenant.

Agreement between landlord and tenant as to rent to be recorded.

58. If, while the record is being prepared, the landlord and tenant agree as to the rent, which shall be recorded as payable, the Revenue-officer, if he has been vested with powers under section 109C of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907, may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under the Bengal Tenancy Act.

Procedure where Revenue-officer not vested with powers under section 109C.

59. If the Revenue-officer has not been vested with powers under section 109C, he may, if he considers that the provisions of that section should be applied in respect of the rent of any tenure or holding, submit a report to any Revenue-officer who has been vested with powers under section 109C in the local area for which the record-of-rights is being prepared: and such Revenue-officer, after giving notice to the landlord and tenant, and after such further inquiry as he may deem necessary, may, if he is satisfied that the rent agreed upon by the landlord and tenant is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under the Bengal Tenancy Act.

Form of proceedings and entry of rents settled or revised.

60. Proceedings for the settlement of rents under section 109C shall be drawn up in such form as the Board of Revenue may prescribe; and all rents settled under clause (*1*), section 109C, or revised by the Board of Revenue under clause (*3*), section 109C, shall be entered in the record-of-rights.

Board's Instructions.

The proceeding shall give a brief account of the circumstances of the case and of the grounds on which the Revenue-officer accepts the agreement and considers the settled rent as fair and equitable. To the proceeding will be annexed a schedule in the following form on which the signatures of the parties or their authorized agents or their competent representatives will be taken. The schedule should also be signed by the Revenue-officer:—

SCHEDULE OF RENTS SETTLED UNDER SECTION 109C OF THE BENGAL TENANCY ACT.

In the Court of of District
Name of village . Thana Thana No.
Khewat No. . Name of landlord

Khatian number.	Name of tenant.	Existing rent.			Settled rent.	Signature of landlord or authorized agent.	Signature of tenant or competent representative.	Date of entry in record-of-rights.	Initial of Revenue-officer.
		According to landlord.	According to tenant.	As ascertained by Revenue-officer.					
1	2	3	4	5	6	7	8	9	10

Proceeding on completion of attestation and publication of draft record.

61. When the record-of-rights has been prepared and attested in the manner prescribed in rules 50 to 57, and when the record shall have been arranged and corrected in accordance with the orders which the Revenue-officer may have passed, he shall record a proceeding in which he shall state that attestation of the records of the village has been completed, and shall then cause the draft record-of-rights to be published in the village in the manner provided in rule 62.

E.—Publication of the Draft Record.

Publication of draft record and hearing of objections: as corrected by notification 2799 L. R. dated 21st Nov. 1910.

62. (*a*) As soon as the record-of-rights has been prepared and attested, a notice in Form 11 in Schedule I. shall be posted up at the landlord's office in the village, and, in the presence of not less than two persons, in some other conspicuous place in the village, or, where the village is uninhabited, in the village in which most of the cultivators of the uninhabited village reside, stating that the draft of the record will be published in the village [or in the camp of the Revenue-officer at village A] on a day to be specified, not less than a week from the date of the posting of such notice, and calling on all persons interested to attend on the date so specified:

Provided that the draft of the record shall not be published until the proceeding under rule 61 has been recorded.

(*b*) On the date fixed for the publication of the draft record the Revenue-officer or any officer deputed by him shall read out the contents, of the record in the presence of as many of the parties as attend at the place specified in the notice issued under clause (*a*) of this rule, and

the Revenue-officer or the officer deputed by him, as the case may be, shall at the same time inform the parties who attend that the draft record will be open for inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine.

Any objection which may be made to any entry during the period named shall be received and considered by the Revenue-officer.

Objections shall, as far as practicable, be made in Form 12 given in Schedule I.

Board's Instructions.

In the case of large settlements, or when a large estate is concerned, the Revenue-officer shall ordinarily allow the draft record to remain open to inspection for a longer period than one month, and should receive and consider objections preferred within such period.

F.—Disposal of Objections under section 103A.

63. When an objection is made within and before the expiry of the period of publication of the draft record prescribed under rule 62 (*b*) regarding the correctness of an entry, or as to the propriety of any omission, notice of the objection (in Form 13, Schedule I.) shall be served on all persons whose interest may, in the opinion of the Revenue-officer, be affected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection.

If no person attends to contest the objection, and the Revenue-officer is satisfied that the notice of the objection has been duly served on all persons interested, the objection may be allowed, and the record amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection.

All such objections shall be dealt with summarily under such instructions as the Board of Revenue may prescribe.

Board's Instructions.

These instructions are contained in rules 396-401 of the Bengal Settlement Manual, 1908.

G.—Settlement of Fair Rents in cases in which a Settlement of Revenue is being, or is about to be, made.

Report to Government where it is not necessary to settle rents of all classes of tenants in a Government Estate

64. If it does not appear to the Revenue-officer expedient to settle the rents of tenants of every class in an estate or tenure belonging to the Government, the Revenue-officer shall submit a report for the orders of the Government under the proviso to section 104 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907.

65. In the case of a settlement of fair rents under Part II. of Chapter X. of the Bengal Tenancy Act, 1885, when a settlement of revenue is being, or is about to be, made, the Revenue-officer shall serve a notice by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, in some conspicuous place in the village comprising the lands under settlement. **Service of notice of settlement of rents.**

The notice shall be in Form 14 in Schedule I. and shall set forth that on a date named and at a place named, the Revenue-officer will settle fair rents in respect of all estates, tenures, or holdings, and for unsettled lands included in such village. A schedule may, when the Revenue-officer thinks fit, be appended to the notice, giving such particulars as he may think necessary relating to the names and numbers of all estates, tenures, and holdings paying revenue or rent to Government, and of unsettled lands for which rent will be settled. Such notice shall be served at least one week previous to the date fixed for settlement of fair rents. When such notice has been served, it shall be held that all persons have, subject to the provisions of rule 73, been sufficiently warned of the date fixed:

Provided that in cases in which a table of rates is prepared under the provisions of section 104B, the notice shall not be published until the table of rates has been confirmed under sub-section (5) of that section.

66. A table of rates shall not ordinarily be prepared when it is found that the tenants of the local area in question hold their lands at lump rentals, and no rates actually exist, or when the rates are so numerous and varied, and are so little dependent on the class of soil, that no table of existing rates can be prepared. When the above conditions do not obtain, and it is possible to prepare a table of existing rates which are generally of a uniform character and in accordance with certain ascertainable classes of soil, a table of rates may be prepared in accordance with the provisions of section 104A (*c*): **Table of rates where necessary.**

Provided that, when the Revenue-officer is of opinion, for reasons to be recorded by him in writing, and submitted to, and approved by, the authority empowered to confirm the table of rates, that the rents stated as the existing rents by the landlord and tenants are not the rents that are legally payable, and that it is impossible to ascertain those rents, a table of rates fairly and equitably payable may be prepared, and shall be based on the rates or rents payable in those neighbouring villages, the lands of which are fairly comparable with the lands of the village.

67. When the Revenue-officer has decided to settle rents in any local area on the basis of a table of rates, under section 104A (*c*), he shall first prepare a table of existing rates, and shall then either maintain those rates, or shall proceed to enhance or reduce them, having regard to the general principles laid down in the Bengal Tenancy Act, 1885, for the enhancement or reduction of rents and especially to section 30 (*b*), (*c*), and (*d*). **Preparation of table of rates.**

Contents of table of rates.

68. The table of rates finally prepared by the Revenue-officer and published by him under section 104B (*2*), shall contain the particulars noted in section 104B (*1*), and shall show—

(*a*) the classes of land, as locally known, that have been adopted in the fixation of rates;

(*b*) the area, expressed in local measure, for which each rate is fixed;

(*c*) the existing rates, if any, taken as the basis of the table of rates; and

(*d*) the rates fixed as fairly and equitably payable for that area of land of each class of land for each class of tenant whose rent is liable to alteration.

Publication of table of rates.

69. (*a*) When a table of rates has been prepared under section 104B, a notice in Form 15 in Schedule I. shall be posted up in the landlord's office in the village or in the presence of not less than two persons in some conspicuous place in the village, stating that the table of rates will be published in the village, or in the camp of the Revenue-officer of village A, on a day to be specified, not less than a week from the date of the posting of such notice, and calling on all persons interested to attend on the date so specified.

(*b*) On the date fixed for the publication of the table of rates the Revenue-officer shall explain to so many of the parties as attend at the place specified in the notice issued under clause (*a*) of this rule the proposed rates and the grounds on which they are based, and shall hear and consider any objections that may be raised to any entries in the table. He shall at the same time inform the parties who attend that the table of rates will be open to inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine, and that any person who objects to any entry in the table of rates may present a petition to him on the subject, within one month of the date of the publication of the table of rates, which will be duly considered under section 104B (*3*).

Record of grounds of order.

70. The Revenue-officer shall record the grounds of his final order in every case in which he disposes of an objection to a table of rates under section 104B (*4*).

Submission of proceedings to confirming authority.

71. In submitting his proceedings to the confirming authority under section 104B (*4*), the Revenue-officer shall describe the land classification adopted by him for the purposes of his table of rates, and shall show in tabular form the rates which were found by him to exist for the classes of land described, and the rates he proposes to substitute for the existing rates, explaining in each case his grounds for maintaining, enhancing, or reducing the rates.

Confirming authorities.

72. (*a*) The following Revenue-authorites are empowered, under section 104B (*4*), to confirm tables of rates prepared under the Bengal Tenancy Act:—

(*i*) when the total rents to which the table of rates is to be applied will not, in the opinion of the Revenue-officer, exceed Rs. 1,000, the Collector of the district;

(*ii*) when the total rents in question will, in the opinion of the Revenue-officer, exceed Rs. 1,000, but will not exceed Rs. 5,000, the Commissioner of the Division; and

(*iii*) when the total rents in question will, in the opinion of the Revenue-officer, exceed Rs. 5,000, the Board of Revenue.

(*b*) The following Revenue-authorities are empowered, under section 104B (*4*), to confirm settlement rent-rolls prepared under the Bengal Tenancy Act:—

(*i*) in all cases in which the settlement rent-roll has been prepared by an Assistant Settlement Officer, and the Settlement Officer is of the rank of a Collector, the Settlement Officer; and

(*ii*) in all other cases the Collector or other Revenue-authority to whom the Settlement Officer is declared by the Board of Revenue to be immediately subordinate.

Settlemet of fair rents.

73. On the date fixed in the notice issued under rule 65 above, or on any subsequent date to which the proceedings may be adjourned, the Revenue-officer shall read, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy and the existing rent, and shall proceed to settle a fair rent for every such tenant under the provisions of section 104A (*1*) (*a*), (*b*), (*d*), or section 104C:

Provided, that, when a Revenue-officer proposes to alter an existing rent, and the parties have not attended in compliance with the general notice prescribed in rule 65 above, the Revenue-officer shall serve each person interested with a special notice, and the fair rent shall not be settled in the absence of such person until after due service of such special notice has been proved.

Contents of settlement rent-roll.

74. The settlement rent-roll shall contain the particulars prescribed in section 104A (*2*), and the fair rent settled for each tenant shall be entered in it by the Revenue officer himself at the time that such rent is settled.

Publication of settlement rent-roll and filing of objections.

75. As soon as the settlement rent-roll has been prepared, it shall be published by a notice in Form 16 in Schedule I. in the manner prescribed for the publication of the draft record in rule 62, and the Revenue-officer or the officer deputed by him to read out the contents of the settlement rent-roll, as the case may be, shall at the same time inform the parties who attend that the settlement rent-roll will be open to inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine, and that any person who objects to any entry in the settlement rent-roll or omission therefrom may present a petition to the

Revenue-officer on the subject within one month of the date of the publication of the settlement rent-roll, which will be duly considered under section 104E.

Method of dealing with objections: Appeal.

76. All objections presented under rule 69 or rule 75 shall be dealt with in accordance with the provisions of rule 63 in the same way as objections presented under section 103A. An appeal presented under section 104G (*1*) shall lie to the officer to whom the Revenue-officer who has passed the order appealed against is immediately subordinate:

Provided that a second appeal shall lie from any order on appeal settling the amount of a fair rent passed by a Settlement Officer or Collector under this rule to the Commissioner of the Division, and that, when the proposed annual rental of any tenancy exceeds Rs. 100 *per annum*, a final appeal shall, in all such cases, lie to the Board of Revenue.

Incorporation of settlement rent-roll in record-of-rights.

77. As soon as the settlement rent-roll has been sanctioned by the confirming authority, it shall be incorporated in the record-of-rights by the entry of the fair rents settled in a column of the khatian to be set apart for that purpose.

Rules 65 to 77 to apply to a settlement of rents under section 112 of the Bengal Tenancy Act.

78. Rules 65 to 77 (both inclusive) shall apply, so far as may be, to a settlement of rents under section 112 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907.

H.—Final Publication of the Record-of-rights.

Final publication of record-of-rights.

79. When all objections under section 103A have been disposed of, as provided for in rule 63 above, and, in cases in which a settlement of revenue is being, or is about to be, made, the settlement rent-roll has been incorporated in the record-of-rights, as provided in rule 77, and the Revenue-officer has corrected the draft reoord in accordance with the orders passed by him on such objections or in the course of the preparation of the settlement rent-roll, he shall finally frame the record and cause it to be published by notifying, in the form shown in Form 17 in Schedule I, that its contents will be read out in the village, and, when the village is uninhabited, in the village in which most of the cultivators of the uninhabited village reside or in such other village in the neighbourhood as may be determined by the Revenue-officer on a date to be specified, not less than a week from the date of the publication of such notice, and by reading it out himself or causing it to be read on the date so specified, in the manner prescribed in rule 62, in the presence of the parties or of as many of them as attend.

Report to Local Government after final publication.

80. When all the record-of-rights in any local area have been finally published, the Revenue-officer shall submit a report to the Local Government, containing such particulars as may be necessary in order to enable the Local Government to issue a notification under sub-section (*2*) of section 103B of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907.

I.—Distribution of copies of the Record-of-rights to parties interested.

Distribution of copies of record-of-rights to parties interested.

81. (*a*) The Revenue-officer shall cause to be made a copy of, or extract from, the record-of-rights as finally published in accordance with rule 79, and this copy or extract shall bear a certificate, under the Revenue-officer's signature and seal, that it is a copy of, or extract from, the record-of-rights as finally published. The copy or extract shall be made over to the landlords concerned, or where there are more landlords than one, to their common agent or common manager as the case may be, or if there be no common agent or common manager, to such person among the landlords as the Revenue-officer may think fit.

(*b*) The finally published record itself shall be made over to the Collector of the district, and shall bear a certificate that it is the finally published record, under the Revenue-officer's signature and seal.

(*c*) An extract from the record-of-rights as finally published under rule 79 relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue-officer and shall bear a certificate that it is an extract from the record-of-right as finally published.

(*d*) Copies of records, or of extracts from them, supplied to landlords and tenants under this rule shall be given free or on payment according as in the case of each local area the Local Government may direct. When payment is required, the sums so recovered shall be adjusted against the expenses incurred on account of survey and settlement.

(*e*) If the Local Government so directs, copies of the maps shall be prepared and distributed to the landlords and tenants concerned, and in such a case the foregoing rules regarding copies of, or extracts from, the record shall apply to such copies of the maps.

J.—The settlement of Fair Rents on the application of the Parties under section 105, and the trial of suits for the decision of disputes under section 106 in cases in which a settlement of revenue is not being, or is not about to be, made.

Proceedings for settlement of fair rents.

82. When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in rules 84 to 87 of this Chapter, the Revenue-officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure for the trial of suits.

Record and settlement of rents in estates under management of Court of Wards or Manager appointed under section 95.

83. When the estate or tenure is managed by the Court of Wards or by a Manager appointed by the District Judge under section 95 of the Act, and a settlement of revenue is not being, or is not about to be, made, the procedure laid down in these rules for recording or settling rents shall be followed, the Manager of the estate or the tenure being regarded as the landlord.

Notice of application for settlement of fair rent.

84. When a landlord or tenant applies for the settlement of a fair rent, notice in Form 18 in Schedule I. shall be served on every person interested in the application, together with a copy of the application, or extract therefrom, or summary thereof, so far as the application concerns such person.

Board's Instructions.

If only one person is interested in the application, a copy should be served on him; if more than one, an extract containing such particulars as concern him shall ordinarily be served upon each person. If a summary only is given, the Revenue-officer should satisfy himself that such summary contains all that is material for the parties interested to be informed of.

Joint application for settlement of rents in certain cases.

85. With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord, whose interest is recorded in the same khewat entry in the same village, may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord:

Provided that, if at any time it appears to the Revenue-officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application as he may think fit.

Inquiry and settlement of fair rents.

86. (*a*) On the date fixed for the settlement of fair rents, or any subsequent date to which the proceedings may be adjourned, the Revenue-officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105.

(*b*) Where a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.

(*c*) Where a landlord or tenant appears and the fair rent is not settled under sub-section (*5*) or sub-section (*6*) of section 105, that is by the acceptance by the parties of a rent proposed by the Revenue-officer, or compromise, the Revenue-officer shall record evidence in the manner prescribed in clause (*f*) of section 148 of the Bengal Tenancy Act, 1885, for the trial of rent suits, and shall settle a fair and equitable rent according to law:

Provided that in important cases the Revenue-officer may, in his discretion, record evidence at length.

(*d*) When a fair rent has been settled under these rules, it shall be entered in the khatian as the rent payable in respect of the holding from the date prescribed by section 110.

Entry of fair rent to be held to be decree.

87. It shall not be necessary for a Revenue-officer to draw up a separate decree with regard to the fair rent settled; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

88. Proceedings under sections 105A and 106 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907, shall be dealt with in all respects as suits between the parties.

Manner of dealing with proceedings under sections 105A and 106.

K.—Correction of bonâ-fide omissions or mistakes in the Record-of-rights.

89. Applications for the correction of *bonâ-fide* omissions or mistakes in the record-of-rights after its final publication under rule 79, where such applications bear on the body of them the admission of the party or parties affected, shall be received and dealt with in accordance with the provisions of section 108A. If the Revenue-officer receiving the application has not been specially empowered under that section, he shall forward the application, for disposal, with his report thereon, to the Revenue-officer so empowered. The court-fee payable on such applications shall be eight annas.

Applications for correction of errors.

Final Reports.

90. The Local Government may, if it thinks fit, direct that a final report be written, in English, for each village and each local area under survey.

Final report and particular thereof.

The report for the village shall show—

(*a*) the number of tenants of each class, with the area held and rental paid by them;

(*b*) the area and classification of the village lands;

(*c*) the rental before settlement, and according to settlement, and the number of fair rents settled, with explanation of increase or decrease;

(*d*) when settlement of land-revenue is being made, the amount of Government revenue, before and after re-settlement, grounds of assessment, and comparison of gross assets with new assessment;

(*e*) the rates of rent prevailing before settlement, and the rates settled, if any;

(*f*) proximity to markets, and facilities for irrigation;

(*g*) village customs, including customs as to payment of village officials;

(*h*) arrangements made for maintenance of records; and

(*i*) other matters deserving of notice which have been excluded from the record-of-rights.

The report for the whole area under survey shall contain the following particulars:—

(i) General description of the tract.

(ii) Its fiscal history.

(iii) Statistical results.

(iv) Comprison of condition of the tract as regards rentals before and after survey.

(v) Financial results, including approximate division, of expenses under the heads—

(*a*) Survey,

(*b*) Record-of-rights, and

(*c*) Preparation and distribution of records.

Board's Instructions.

The Report should also show the custom regarding the transferability or otherwise of occupancy-rights. Mention should also be made of any illegal *abwabs* which have been found to be in existence before the preparation of the record-of-rights, but which were struck off.

Application under section 103 for Survey and Record-of-rights.

Applications under section 103 to be made to Collector.

91. These applications shall be made to the Collector of the district.

Particulars to be specified in such applications.

92. The application shall specify—

(*a*) the status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder;

(*b*) the particulars specified in section 102 of the Bengal Tenancy Act, in respect of which the application is made; and

(*c*) the number of tenants occupying the estate or tenure or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant is able to give these particulars).

Further particulars in applications by proprietors and tenure-holders.

93. (*a*) If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Bengal Act VII. of 1876

(*b*) If the application is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

Submission of application to Commissioner.

94. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

Power of Commissioner to call for further particulars or amendment.

95. The Commissioner may call for further information or may require the application to be amended.

Procedure of Commissioner: Reference to Board.

96. If the Commissioner considers that the application cannot be granted with advantage to the interests of all persons concerned, he may reject it. If he approves it, he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

Record of reason for rejection of application. Appeal to Board.

97. A Commissioner rejecting an application shall record his reason for doing so, and the applicant, if dissatisfied with the order may appeal within one month to the Board of Revenue.

98. When an application is referred to the Board under rule 96, or an appeal is preferred under rule 97, the Board may call for further information, if necessary, and shall pass such orders as it may think fit for allowing or rejecting the application.

Procedure and powers of Board.

99. As soon as an application is allowed, the Collector shall call upon the applicant to deposit 8 annas *per* acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed If the Collector is unable to estimate the area, he shall require a deposit at the rate of Rs. 2 for each tenant. If the amount does not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs. 500, the applicant shall deposit the sum of Rs. 500 and shall give such security as the Collector may require for the payment of the balance of the deposit in such instalments as the Collector may from time to time demand.

Procedure of Collector where application allowed. Deposit of costs.

If the amount deposited as above proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination.

If the amount deposited proves insufficient to cover the cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.

Board's Instructions.

The Collector should report such cases to the Commissioner, who will pass the final order cancelling the application.

100. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101.

Revenue-officer to follow rules framed for guidance of officers acting under section 101.

CHAPTER VII.

General Scale of Fees.

101. *Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court-fees Act, 1870 (VII. of 1870)], and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

Fees for service of notice.

102. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

Fees where notice directed to several persons in different villages.

103. In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, shall be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, etc.,

Additional charges for railway, boat, or ferry charges, etc.

the sum leviable shall be charged, in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII. of the rules prescribed by the High Court under clause (*a*) of section 20 of Act VII. of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

Demurrage for detention of peon.

104. If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day, and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

Fees for deposits of rent.

105. *Deposits of Rent.*—For deposits of rent under section 61 (*a*) fees shall be levied according to the following scale:—

	Rs.		A.
On any sum not exceeding	5	...	1
On any sum exceeding but not exceeding	5 / 10	...	2
On any sum exceeding but not exceeding	10 / 25	...	4
On any sum exceeding	25	...	4

for each complete sum of Rs. 25, and 4 annas for the remainder, provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only 2 annas:

Provided, also, that in no case shall the fee exceed the sum of Rs. 5.

Fees for processes for distraint.

106. *Distraint of Crops.*—The following scale of charges is prescribed on account of processes for distraint and sale under section 134:—

(*a*) in respect of the warrant of distraint—8 annas;

(*b*) in respect of each man necessary to effect the distraint, and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day; and

(*c*) in respect of action taken under clause (*a*), section 126, for the reaping, storing, or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or storehouse, if necessary.

In addition to the charges under clauses (*a*), (*b*), and (*c*) above, railway-fare, boat-hire, and ferry charges may be levied, when necessary as under rule 103.

SCHEDULE I.

(Board's Misc. Form No. 318A.)

FORM 1.

Application for Registration of Improvement under section 80 of Act VIII. of 1885.

[*See* Rule 13.]

To

The Collector of _____

The application of _____, son of _____, residing at _____, for registration of an improvement under section 80 of the Bengal Tenancy Act, VIII. of 1885, in accordance with the details specified in the annexed List A.

Date _____ *Signature of landlord.*

LIST A.

[*See* Rule 13.]

(*To be annexed to Application for Registration of Improvement under section 80 of the Bengal Tenancy Act, VIII. of 1885.*)

1. Names of applicants, with parentage and residence.
2. Nature of applicants' interest in land improved.
3. Estate or tenure in which the lands affected lie—
   (*a*) Name;
   (*b*) Tauzi number.
4. Nature of improvement.
5. At whose expense executed.
6. Cost of improvement.
7. When completed.

Name of Tenancy Act village.	Thana.	Thana number, if any.	Pargana.
8	9	10	11

(*i*) FIRST ALTERNATIVE.

Name of each *raiyat* and caste.	Father's name.	Residence.	Landlord's *jamabandi* number, if any.	REMARKS.
12	13	14	15	16

(*ii*) SECOND ALTERNATIVE.

Approximate area benefited.	Approximate number of holdings benefited.	Total area of village.	Total number of holdings.	REMARKS.
12	13	14	15	16

FORM 19.

[*See* Rule 13A.]

NOTICE to $\frac{\text{A B son of C D}}{\text{tenants}}$ of village , thana district .

Whereas an application has been received from , son of residing at , claiming to be a landlord in this village for the registration of an improvement, under section 80 of the Bengal Tenancy Act, VIII. of 1885, to the $\frac{\text{holdings}}{\text{areas}}$ specified in $\frac{\text{List A}}{\text{the extract from List A}}$ hereto appended, a local inquiry will be made at , on , at about

to inquire into the claim of the aforesaid that he has made an improvement, benefiting the $\frac{\text{holdings}}{\text{areas}}$ specified in $\frac{\text{List A}}{\text{the extract from List A}}$ hereto appended, and to hear objections to this claim. Therefore $\frac{\text{the tenants affected}}{\text{you}}$ and all other persons interested or concerned are hereby called upon to attend at the place named above on the date and at the time specified.

Revenue Officer.

COPY forwarded to _____ by registered post for his information.

_____ }
The _____ *191* . } *Revenue Officer.*

[Board's Misc. From No. 319A.]

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section $\frac{12}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs , and Rs. for serving the notice by post in a registered cover, and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,

Registering Officer.

To

A. B., RESIDENT OF

TAKE notice that the transfer of the tenure [or *raiyati* holding at fixed rates (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not

claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of transferee of tenure or *raiyati* holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								RS. A. P.	

C. D.,
Registering Officer.

ORDERED that this notice be served on the above-named landlord.

E. F.,
Collector.

REVERSE OF THE FORM.

Serial number of chalan.	Number of notice.	Name of depositor.	Name of person to whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				RS. A. P.

[Board's Misc. Form No. 319A.]

FORM 3.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of , as required by section $\frac{12}{18}$ of Act VIII. of 1885. A copy for each joint-

landlord is herewith forwarded. The landlord's fee of Rs. money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,
Registering Officer.

To

A. B., &c., RESIDENTS OF .

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [or *raiyati* holding at fixed rates (as the case may be)] as specified below, of which you are stated to be a joint-landlord, has been registered, and that the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some person authorized on your behalf to receive it. The amount stands to your credit, and will be paid to you and your co-sharers or transferred to your revenue-account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of serving of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of transferee of tenure or *raiyati* holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10

C. D.,
Registering Officer.

ORDERED that this notice be served on the above named landlords.

E. F.,
Collector.

REVERSE OF THE FORM.

Serial number of chalan.	Number of notice.	Name of depositor.	Names of persons to whom to be served.	Details of cash receipts with amount.
1	2	3	4	5

(Board's Misc. Form No. 320.)

FORM 4.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of as required by section $\frac{13}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,

Judge.

To

A. B, RESIDENT OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)], the tenancy which is alleged to be a tenure (or *raiyati* holding at fixed rates) specified below, of which you are alleged to be the landlord, has been confirmed (or made) and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue-account on application. If it is not claimed by you within three

years from the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates transferred, with village and pargana in which situated.	Number of execution-case and names of parties.	Name, farher's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or *raiyati* holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							RS. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the above-named landlord.

E. D.,
Collector.

(Board's Misc. Form No. 320A.)

FORM 5.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc, residents of as required by section $\frac{13}{18}$ of Act VIII. of 1885. A copy for each joint landlord is herewith forwarded. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a register cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,
Judge.

To

A. B., ETC., RESIDENTS OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenure (or *raiyati* holding at fixed rates) specified below, of which you are alleged to be a joint landlord, has been confirmed or made, and the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some other person authorized on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue-account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates transferred, with village and pargana in which situated.	Number of execution-case and names of parties.	Name, father's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or *raiyati* holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							RS. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the above-named landlords.

E. F.,
Collector.

(Board's Misc. Form No. 321.)

FORM 6.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

To THE COLLECTOR OF .

BE pleased to cause this notice to be served on A. B., resident of . The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,

Tenure-holder or raiyat holding at fixed rates.

To

A. B., RESIDENT OF

TAKE notice that I have succeeded to the tenure [or *raiyati* holding at fixed rates (as the case may be)] specified below, of which you are the landlord and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue-account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of of late tenure-holder or *raiyat* holding at fixed rates.	Date, if known, of death of deceased tenure-holder or *raiyat* holding at fixed rates.	Name, father's name, and residence of successor to tenure or *raiyati* holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D.

Resident of

ORDERED that this notice be served on the above-named A. B.

E. F.,

Collector.

(Board's Misc. Form No. 321A.)

FORM 7.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24*)

(*Where there is more than one landlord and no common agent or manager.*)

To THE COLLECTOR OF .

BE pleased to cause this notice to be served on A. B., etc., residents of . A copy for each joint landlord is herewith submitted. The landlord's fee of Rs. , money-order fee of Rs. . and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,

Tenure-holder or raiyat holding at fixed rates.

To A. B., &c., RESIDENTS OF

TAKE notice that I have succeeded to the tenure [for *raiyati* holding at fixed rates (as the case may be)] specified below, of which you are a joint landlord. The landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers or some other persons authorized on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue-aecount on application; or it will be sent by money order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or *raiyati* holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or *raiyati* holding at fixed rates.	Name, father's name, and residence of late tenure-holder or *raiyat* holding at fixed rates.	Date, if known, of death of deceased tenure-holder or *raiyat* holding at fixed rates.	Name, father's name, and residence of successor to tenure or *raiyati* holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D., *Resident of*

ORDERED that this notice be served on the above-named A. B.

E. F., *Collector.*

(Board's Misc. Form No. 321B.)

FORM 8.

NOTIFICATION UNDER SECTION 87 OF ACT VIII. OF 1885.

(*See Rule 37.*)

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned, and that I am about to re-enter upon it accordingly.

Dated } *Landlord.*

Schedule of Property.

Name of village and pargana in which situated.	Area and boundaries of holding.	Rent of holding.
1	2	3

(Board's Misc. Form No. 321C.)

FORM 9.

Requisition to Collector for a verified or certified copy of, or extracts from the record-of-rights under section 148 (b 1) of the Bengal Tenancy Act, 1885, as amended by Bengal Act I. of 1907.

(*See Rule 39.*)

BE pleased to furnish to this Court on or before the a certified copy of, or extract from the record-of-rights relating to the undermentioned tenancy, which is required for reference in suit No. of

A. B.,

Judge.

Name of village.	Thana.	Thana number.	Tauzi number, and, if revenue-free, Register number.	Name of landlord at the date of publication of the record-of-rights.	Name of tenant at the date of publication of the record-of-rights.	Number of khewat or khatian or reference to other document forming part of the record-of-rights of which copy or extract is required.	REMARKS.
1	2	3	4	5	6	7	8

THE copy required is sent herewith.

C. D.,
Collectorate, Record-keeper or other officer authorized to certify copies.

COPY received.

E. F.,
Sarishtadar, Civil Court.

(Bengal Land Records Form No. 30.)

FORM 10.

Notice of Date of Attestation of the Records.

[*See Rule 50 (a).*]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village . | Pargana
Thana . | District

Thana No. or Revenue Survey No.

Take notice that under the powers vested in me by the Bengal Tenancy Act, 1885 (VIII. of 1885), and the rules made thereunder I shall, on the day of 190 , at , proceed to attest and complete the record-of-rights in the above-mentioned village.

You are hereby required to attend before me at the above-mentioned time and place, or at any other time and place to which

the proceedings may be adjourned and to produce such evidence, written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-officer.

(Bengal Land Records Form No. 33.)

FORM 11.

Notice for draft publication of the record.

[*See Rule 62 (a), Chapter VI. of the Rules.*]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats and occupants of—

Village	.	Pargana
Thana	.	District
Thana No.	or Revenue Survey No.	

Take notice that as the attestation of the record of the above-mentioned village has been completed, the Draft Record will be published by its contents being read out in (the village / in village (a) thana (b)) on the . All persons interested are called on to attend on this date.

Revenue-officer.

(Bengal Land Records Form No. 34.)

FORM 12.

Objection under section 103A of the Bengal Tenancy Act.

[*See Rule 62 (b), Chapter VI., of the Rules.*]

Village	.	Pargana
Thana	.	District
Thana No.	or Revenue Survey No.	

Name of objector, with father's name, caste and address.

Name, father's name, caste and address of person in whose khatian the entry objected to has been made, and number of khatian, if known.

Statement of entry objected to, with details of objection.

Statement of relief sought.

Signature of objector, with date of filing.

(Bengal Land Records Form No. 35.)

FORM 13.

Notice fixing the date for the hearing of an objection under Section 103A of the Bengal Tenancy Act.

[*See Rule 63.*]

By order of the Settlement Officer at
District

CASE No. OF 190 .

IN THE COURT OF

Objector.

Notice to

WHEREAS an objection (copy of which is annexed) under section 103A of the Bengal Tenancy Act has been filed, and the date of its disposal has been fixed for the 190 , you are hereby informed that you should, on the day fixed, appear personally or by agent in this Court at at o'clock to produce any evidence you have. In case of your failing to appear at the time fixed, orders will be passed according to law.

Dated Month 190

(Bengal Land Records Form No. 31.)

FORM 14.

Notice for settlement of Fair Rents in connection with a settlement of the land revenue.

[*See Rule 65.*]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village	.	Pargana
Thana	.	District

Thana No. or Revenue Survey No.

Take notice that on at I shall proceed to fix fair and equitable rents for all the tenants for the above-mentioned village.

All persons interested or concerned are called upon to attend at the place named above on the date specified.

Revenue-officer.

(Bengal Land Records Form No. 36.)

FORM 15.

Notice for publication of a Table of Rates.

[*See Rule 69 (a).*]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village	.	Pargana
Thana	.	District

Thana No. or Revenue Survey No.

Take notice that a table of rates for the above-mentioned village has been prepared, and that it will be published in the village on the day of .

All persons interested are called upon to attend on the date specified.

Revenue-officer.

(Bengal Land Records Form No. 37.)

FORM 16.

Notice for the publication of a Settlement Rent roll.

[*See Rule 75.*]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats and occupants of—

Village	.	Pargana
Thana	.	District

Thana No. or Revenue Survey No.

Take notice that fair rents having been settled for all tenants in the above-mentioned village, a Settlement Rent-Roll has been prepared, and that this Rent-Roll will be published by its contents being read out $\left(\frac{\text{in the village}}{\text{in village } (a) \text{ thana } (b)}\right)$ on the

All persons interested are called upon to attend.

Revenue-officer.

(Bengal Land Records Form No. 38.)

FORM 17.

Notice for Final Publication of the Record.

[*See Rule 79.*]

NOTICE to the proprietors, tenure-holders landlords, raiyats, under-raiyats, and occupants of—

Village	.	Pargana
Thana	.	District

Thana No. or Revenue Survey No.

Take notice that all objections under section 103A of the Tenancy Act having been decided by the Revenue-officer *and the Settlement Rent-Roll having been incorporated in the record-of rights*, the record of the above-mentioned village has been finally framed and will be published by its contents being read out in the village on the

All persons interested are called on to attend on this date.

Revenue-officer.

NOTE.—The words in italics are to be omitted in cases in which a settlement of land-revenue is not being made.

(Bengal Land Records Form No. 32.)

FORM 18.

Notice for service on Persons interested in an application made by Landlord or Tenant for Settlement of Fair Rents.

[*See Rule 84.*]

To

WHEREAS (here state name, description and address of applicant or applicants) $\frac{\text{landlords}}{\text{tenants}}$ have made an application, in which you are interested, for the settlement of a fair rent for lands in village

$\frac{\text{a copy of the application}}{\text{an extract containing such parts of the application as concern you}}$ is hereby served on you, and you are hereby summoned to appear in this Court in person or by duly-anthorized agent at o'clock on the at for final disposal of the application. In default of your appearance on the day mentioned, the application will be heard and determined in your absence. You should bring or send by your agent on the day fixed any document or evidence on which you intend to rely.

Revenue-officer.

SCHEDULE II.

(*Referred to in Rule 4.*)

BURDWAN DIVISION.

DISTRICT.	Local areas.	Staple food-crops.	Marts at which prices to be taken.
1	2	3	4
BURDWAN ...	Sadar subdivision ...	Rice	Burdwan.
	Asansol ditto ...	Do.	Raniganj.
	Katwa ditto ...	Do.	Katwa.
	Kalna ditto ...	Do.	Kalna.
BIRBHUM ...	Sadar subdivision ...	Rice	Suri.
	Rampur Hat ditto ...	Do.	Rampur Hât.
BANKURA ...	Sadar subdivision ...	Rice	Bankura.
	Vishnupur ditto ...	Do.	Vishnupur.
MIDNAPORE ...	Sadar subdivision ...	Rice	Midnapore.
	Ghatal ditto ...	Do.	Ghatal.
	Tamluk ditto ...	Do.	Tâmluk.
	Contai ditto ...	Do.	Contai.
HOOGHLY ...	Sadar subdivision ...	Rice	Hooghly.
	Serampore ditto ...	Do.	Bhadreswar.
	Arambagh ditto ...	Do.	Arambagh.
	Howrah ditto ...	Do.	Howrah.
	Ulubaria ditto ...	Do.	Ulubaria.

PRESIDENCY DIVISION.

District.	Local areas.	Staple food-crops.	Marts at which prices to be taken.
1	2	3	4
24-Parganas ...	Sadar subdivision ...	Rice	Chetla Hât.
	Barasat and Barrackpore subdivisions.	Do.	Barasat. Bistopore.
	Diamond Harbour subdivision.	Do.	Mugra Hât.
	Basirhat subdivision ..	Do.	Baduria.
Nadia ...	Sadar subdivision ...	Rice	Goari.
	Ranaghat ditto ...	Do.	Ranaghat.
	Meherpur ditto ...	Do.	Kaliabazar.
	Chuadanga ditto ...	Do.	Chuadanga.
	Kushtia ditto ..	Do.	Bahadurkhali.
Murshidabad ...	Sadar subdivision ...	Rice	Berhampore.
	Lalbagh ditto ...	Do.	Lalbagh.
	Kandi ditto ...	Do.	Kandi.
	Jangipur ditto ...	Do.	Jangipur.
Jessore ...	Sadar subdivision ...	Rice	Jessore.
	Narail ditto ...	Do.	Narail.
	Magura ditto ...	Do.	Magura.
	Jhenida ditto ...	Do.	Jhenida.
	Bongaon ditto ...	Do.	Bongaon.
Khulna ...	Sadar subdivision ...	Rice	Khulna.
	Satkhira ditto ...	Do.	Satkhira.
	Bagerhat ditto ...	Do.	Bagerhat.

PATNA DIVISION.

Patna ...	Sadar subdivision, excluding thana Maner.	*Makai* up-land ...	Maroofganj.
		Rice low-land ...	
	Barh subdivision .	*Makai* up-land ...	Barh.
		Rice low-land ...	
	Bihar ditto .	*Murwa* up-land ...	Bihar.
		Rice low-land ...	
	Dinapore subdivision, with thana Maner.	Barley up-land ...	Dinapore.
		Rice low-land ...	
Gaya	Sadar subdivision ...	Wheat up-land ...	Gaya.
		Rice low-land ...	
	Nawadah ditto	Wheat up-land ...	Nawadah.
		Rice low-land ...	
	Jahanabad ditto ...	Wheat up-land ...	Jahanabad.
		Rice low-land ...	
	Aurangabad ditto ...	Wheat up-land ...	Aurangabad.
		Rice low-land ...	
Shahabad ...	Sadar subdivision ...	Wheat up-land ...	Arrah.
		Rice low-land ...	
	Buxar ditto ...	Wheat up-land ...	Buxar.
		Rice low-land ...	
	Sasaram ditto ...	Wheat up-land ...	Sasaram.
		Rice low-land ...	
	Bhabhua ditto ...	Wheat up-land ...	Bhabhua.
		Rice low-land ...	

PATNA DIVISION—(*concld.*).

District.	Local areas.	Staple food-crops.	Marts at which prices to be taken.
1	2	3	4
Saran	Sadar subdivision ...	*Makai* up-land ... Rice low-land ...	Shahebganj.
	Gopalganj ditto ...	*Makai* up-land ... Rice low land ...	Mirganj.
	Siwan ditto ...	*Makai* up-land ... Rice low-land ...	Siwan.
Champaran ...	Sadar subdivision ...	*Makai* up-land ... Rice low-land ...	Motihari.
	Bettiah ditto ...	*Makai* up-land ... Rice low-land ...	Bettiah.
Muzaffarpur ...	Sadar subdivision ...	*Makai* up-land ... Rice low-land ...	Muzaffarpur.
	Sitamarhi ditto ...	*Makai* up-land ... Rice low-land ...	Sitamarhi.
	Hajipur ditto ...	*Makai* up-land ... Rice low-land ...	Hajipur.
Darbhanga ...	Sadar subdivison ...	*Murwa* up-land ... Rice low-land ...	Darbhanga
	Madhubani ditto ...	*Murwa* up-land .. Rice low-land ...	Madhubani.
	Samastipur ditto ...	*Makai* up-land ... Rice low-land ...	Samastipur.

BHAGALPUR DIVISION.

Monghyr ...	Sadar subdivision ...	Wheat up-land ... Rice low-land ...	Monghyr.
	Begusarai ditto ...	Wheat up land ... Rice low-land ...	Begusarai.
	Jamui ditto ...	Wheat up-land ... Rice low-land ...	Jamui.
Bhagalpur ...	Sadar subdivision ...	*Makai* up-land .. Rice low-land ...	Bhagalpur.
	Banka ditto ...	*Makai* up-land ... Rice low-land ...	Banka.
	Madhipura ditto ...	*Murwa* up-land ... Rice low-land ...	Madhipura.
	Supaul ditto ...	*Murwa* up-land ... Rice low-land ...	Supaul.
Purnea ...	Sadar subdivision ...	Wheat up-land ... Rice low-land ...	Beamsganj.
	Araria ditto ..	Wheat up land ... Rice low-land ...	Araria.
	Kishanganj ditto ...	Wheat up-land ... Rice low-land ...	Kishanganj.

District.	Local areas.	Staple food-crops.	Marts at which price to be taken.
1	2	3	4
ORISSA DIVISION.			
Cuttack ...	Sadar subdivision ...	Rice	Cuttack town. Charchika Hât.
	Jajpur ditto ...	Do.	Jajpur town.
	Kendrapara ditto ...	Do.	Kendrapara town.
Balasore ...	Balasore Sadar subdivision	Rice	Balasore.
	Bhadrak ditto	Do.	Bhadrak. Chandbali.
Puri .	Sadar subdivision .	Rice	Puri. Banamalipur.
	Khurda ditto ...	Do.	Khurda.

APPENDIX V.

SECOND PART: RULES FRAMED BY THE GOVERNMENT OF EAST BENGAL AND ASSAM.

The 24th August 1909.

No. 2304R.—In exercise of the power conferred upon him by sub-section (*2*) of section 61, section 134 and section 189 of the Bengal Tenancy Act, 1885 (VIII. of 1885), the Lieutenant-Governor is pleased to direct that the following revised rules under the said Act, which, subject to the modifications now made therein, were published in accordance with the provisions of sub-sections (*1*), (*2*) and (*3*) of section 190 of the said Act at pages 553-567 of the *Eastern Bengal and Assam Gazette*, Part II., dated the 24th March 1909, shall be substituted for the like rules, which were published with the Notification, dated the 21st December 1885, at pages 1255-68 of the *Calcutta Gazette*, Part I., dated the 23rd idem, as subsequently added to modified or altered up to the date of this Notification.

GOVERNMENT RULES UNDER THE BENGAL TENANCY ACT, 1885 (VIII. OF 1885).

[*As modified by subsequent legislation.*]

CHAPTER I.

GENERAL.

1. In carrying out the following rules, Revenue Officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue Officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII. of 1885.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue Officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervison and control of the Board of Revenue; and the proceedings and orders of each Revenue Officer under this Act shall be subject to the supervision and control of the Revenue Officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

3. Where no other mode of service of notice is prescribed by the Bengal Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of summons on a defendant under

the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure; and, if it is addressed to a number of persons occupying or owning different holdings or tenures in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, *or* by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village.

CHAPTER II.

STAPLE FOOD-CROPS AND PRICE-LISTS.

4. The local areas under sub section (*1*) of section 39 shall be those entered in Schedule II. annexed to these rules, and the mart specified in the same schedule for each local area shall be that at which prices shall be recorded.

5. Rice has been declared, and until further orders, shall be deemed to be the staple food-crop in all such local areas.

6. Price-lists of the staple food-crop shall be prepared on one market-day in the month at intervals of not less than twenty days. This market-day shall be selected by the Collector, subject to the control of the Board of Revenue.

7. The price recorded shall be the prevailing retail price at which staple food-crop was actually sold in the mart to which the price-list refers on the day selected under the last preceding rule.

8. (*1*) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector may authorise a kanungo to prepare the lists.

(*2*) Where prices are recorded at marts, other than those at the headquarters of districts, the Collector may, with the sanction of the Commissioner, authorise a Sub-Registrar to prepare the lists on days when no gazetted officer or kanungo is available.

(*3*) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price lists, and the list shall be signed by at least one of them as well as by the officer preparing it.

9. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(*a*) the date of his visit to the mart at which prices are to be recorded;

(*b*) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

10. When price-lists are prepared at the sadar subdivision by an officer other than a Covenanted Deputy Collector, or at other subdivisions by an officer subordinate to the Subdivisional Officer, or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Subdivisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanation and cause errors to be corrected; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

11. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the collectorate or subdivisional office, and at every police station and Munsifi in the local area.

12. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the list shall be submitted to the Board with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections.

CHAPTER III.

LANDLORDS' AND TENANTS' IMPROVEMENTS.

13. Applications from landlords for the registration of improvements shall be made to the Collector of the district. If any such application be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

14. As far as practicable, the application shall be in Form I. of Schedule I attached to these rules. The Collector shall either verify the application personally or shall depute a Revenue Officer, not below the rank of Sub-Deputy Collector to make the verification. In all cases the verification shall be by local enquiry.

15. Before holding a local enquiry under last rule, the Revenue Officer shall prepare a proclamation giving general notice to the tenants of every village concerned of his proposed local enquiry and of the date thereof. He shall cause such proclamation to be published by beat of drum in every such village and he shall cause a copy of the proclamation, together with a copy of the landlord's application, to be fixed up in the presence of not less than two persons, in some conspicuous place of every such village. The expenses of such publication shall be borne by the applicant for registration.

16. The Revenue Officer, who makes a local enquiry under rule 14 shall ascertain whether the work in question was carried out, and, if so, at what time, at whose expense, and at what cost; whether the work is an improvement as defined in section 76 (2) of the Act, and was lawfully made by the landlord; and what tenants have been benefited thereby. The Revenue Officer shall embody in a proceeding the result of his local enquiry. When an officer, other than the Col-

lector, has made the local enquiry, he shall submit the proceeding to the Collector.

17. The Collector, after considering the proceeding of the local enquiry and after holding such further enquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement.

18. Every Revenue Officer who records evidence under section 81 (*1*) shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII. of the Code of Civil Procedure (Act V. of 1908).

CHAPTER IV.

RECORD OF PROPRIETORS' PRIVATE LANDS.

19. Applications under section 118 shall be made to the Collector of the district. If any such application be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

20. The application shall be signed by the party making it, and shall contain the following particulars so far as the applicant is able to furnish them:—

(*a*) the name, tauzi number, and Government revenue of the estate;

(*b*) the names of the registered proprietors and the share held by each;

(*c*) the specification of each plot of land refered to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known;

(*d*) the names of the tenants (if any) in occupation of each such plot; and

(*e*) the grounds of the application.

21. On receipt of the application the Collector shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings. If the Collector directs that further proceedings be taken, he may transfer the application for disposal to any Revenue Officer subordinate to him.

22. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the Collector shall order that the lands be measured and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

23. Rules 40-48 relating to Revenue Officers acting under Chapter X. of the Bengal Tenancy Act shall apply *mutatis mutandis* in the case of Revenue Officers acting under Chapter XI. of the said Act.

CHAPTER V.

SERVICES OF NOTICES.

24. Notices under sections 12, 13, 15, and 18 shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I (Forms 2 to 7).

25. (*a*) Where there is a sole landlord, or where two or more persons are joint-landlords, and have a common agent such as is referred to in section 188, or a common manager appointed under section 95, the notices shall be served on such sole landlord or his agent or on such common agent or manager, as the case may be.

(*b*) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

26. In each case under the preceding rule the notice shall be forwarded by post, in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898), and an acknowledgment obtained.

27. In the cases mentioned in rule 25 (*a*), the landlord's fee shall be transmitted by money-order to the sole landlord or his agent or to the common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I.

28. If, in cases where the amount of landlord's fee is transmitted by money order, the sole landlord or his agent or the common agent or manager refuses to accept payment thereof, and in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and on the expiry of that time the Collector of the district may declare that it has been forfeited and on such declaration being made it shall be at the disposal of Government.

29. The Collector or any other officer who signs the order for the notice to be served shall satisfy himself that the landlord's fee and other fees and charges realised in cash have been paid into the treasury.

30. The agreement under sub-section (*2*) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of summons on defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

31. The notice under sub-section (*4*) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process fee prescribed by the High Court.

32. In cases (*a*), (*b*) and (*d*) of section 61 referred to in sub-section (*2*) of section 63, the notice of the receipt of the deposits shall be served by forwarding the notice by post in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898), or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

33. The general notice referred to in sub-section (*2*) of section 72 may be published by the transferee by fixing up a written notice to the tenants on the village office or in the presence of not less than two persons in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and he Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process fee prescribed by the High Court.

34. Notice under section 73 shall be in writing and shall be delivered to the landlord or his agent or, where two or more persons are joint-landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (*2*) of section 54. When there are two or more joint-landlords without a common agent or manager, the notice shall be served at the village office of the principal co-sharer or at such other places as may be appointed by each of the landlords for payment of rent under sub-section (*2*) of section 54.

35. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process fee prescribed by the High Court.

36. If the raiyat elects to proceed under sub-section (*2*) of section 86, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under sub-section (*4*) of the said section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

37. A notice of the tenant's abandonment of his holding under sub section (2) of section 87 shall be in the form (Form 8) contained in Schedule I. and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling house, or tree or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

38. Notice to the tenant under section 155 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

39. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the form (Form 9) in Schedule I. The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose.

CHAPTER VI.

PART. I.—Powers of Officers making surveys and preparing records-of-rights.

40. When a Revenue Officer is appointed for the purpose of surveys and preparing records-of-rights under Chapter X. of the Bengal Tenancy Act within any district, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." All such officers are hereby vested with:—

(a) all the powers exercised by a Civil Court in the matter of procuring the attendance of parties and witnesses and of procuring the production of documents;

(b) power to enter upon any land included within the area in respect of which the order under section 101 has been made, and to survey, demarcate, and make a map of the same;

(c) power to cut and thresh the crops on any land in respect of which the order under section 101 has been made and to weigh the produce with a view to estimating the capabilities of the soil.

41. A Revenue Officer appointed with the additional designation of Assistant Settlement Officer is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

42. A Revenue Officer appointed with the additional designation of Settlement Officer is hereby vested also with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

43. A Revenue-officer appointed with the additional designation of Settlement Officer or Assistant Settlement Officer is hereby vested also with all the powers exercised by a Civil Court in the trial of suits.

44. A Revenue Officer appointed with the additional designation of Settlement officer may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him—

(*a*) objections under section 103A;

(*b*) the settlement of fair rents, including the preparation of a table of rates;

(*c*) the preparation of a settlement rent-roll under Chapter X., Part II., of the Act;

(*d*) objections under section 104B (*3*) or section 104E;

(*e*) applications for the settlement of fair rents under section 105;

(*f*) suits instituted for the trial of disputes under section 106;

(*g*) applications for the commutation of rents under section 40.

45. A Revenue Officer appointed under the designation of Settlement Officer may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in rule 44, and may dispose of them himself or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He may also transfer to a competent Civil Court for trial any particular case or class of cases under section 106.

46. Where no special Settlement Officer has been appointed for any district, the Collector of that district is hereby appointed to discharge all the functions of a Revenue Officer under Chapter X. of the Bengal Tenancy Act, and is vested with all the powers of a Settlement Officer under rules 40 to 45.

47. In respect of all operations under Chapter X. of the Bengal Tenancy Act which have been placed by the Board of Revenue under the administrative control of the Director of Land Records, that officer is hereby appointed to discharge all the functions of Revenue Officer under the said chapter and is vested with all the powers of a Settlement Officer under rules 40 to 45. In respect of such operations he is further declared, under section 104B (*4*), to be the "confirming authority" for tables of rates and settlement rent rolls which have been prepared by other Revenue Officers, and he is declared, under section 104G (*1*), to be the Superior Revenue authority to whom appeals will lie from original orders on objections passed by other Revenue Officers under section 104B (*3*) or section 104E. In the case of tables of rates and settlement rent-rolls prepared by the Director of Land

Records, the Board of Revenue will be the confirming authority, and in the case of original orders on objections passed by the Director of Land Records, the Board of Revenue will be the appellate authority.

48. In respect of all operations under Chapter X. of the Bengal Tenancy Act, which have been placed by the Board of Revenue under the administrative control of the Commissioner of the Division, the Commissioner will exercise all the powers vested in the Director of Land Records by rule 47. In the case tables of rates and settlement rent-rolls prepared by the Commissioner, the Board of Revenue will be the "confirming authority," and in the case of original orders on objections passed by the Commissioner, the Board of Revenue will be the appellate authority.

PART II.

PROCEDURE.

49. When an order has been made under section 101 (*1*) or section 101 (*2*), directing that a survey shall be made and a record-of-rights prepared by a Revenue Officer in respect of the lands of any local area, estate or tenure or part thereof, the survey shall be made and the record-of-rights prepared in the manner described in the following rules and by the following processes, namely:—

(i) Traverse survey.

(ii) Cadastral survey.

(iii) Erection of boundary marks.

(iv) Preliminary record-writing (or *khanapuri*).

(v) Local explanation (or *bujharat*).

(vi) Attestation.

(vii) Publication of the draft record.

(viii) Disposal of objections under section 103A.

(ix) Preparation of the settlement rent roll, if any.

(x) Preparation of the final record.

(xi) Publication of the final record.

(xii) Distribution of the final record and of printed maps.

(xiii) Settlement of fair rents under sections 105 and 105A.

(xiv) Trial of suits under section 106.

A Revenue Officer who has been appointed with the additional designation of Settlement Officer may, at any time before the publication of the final record, direct that any portion of the proceedings in respect of the lands of any local area, estate or tenure or part thereof, shall be cancelled and that the proceedings shall be carried out *de novo* from such stage as he may direct.

50 *Traverse Survey.*—The cadastral survey of the notified area shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

51. *Cadastral Survey.*—A large-scale map showing roads, rivers, railways and other physical features of the country as well as homesteads and other fields, shall be prepared for each village as defined in section 3 (*10*) (*a*) or section 3 (*10*) (*b*) of the Bengal Tenancy Act. When the Settlement Officer is of opinion that the villages of any local area are, as so defined, unsuitable as the unit of survey and record, he shall, after ascertaining, as far as possible, the opinions of the landlords and tenants concerned, forward to the Board of Revenue, through the controlling officer to whom he is subordinate, a full report setting out the facts of the case. If the Board of Revenue issue an order under section 115A sanctioning the adoption, within any local area, of a unit of survey and record other than the villages as defined in section 3 (*10*) (*a*) or section 3 (*10*) (*b*), the Settlement Officer shall adopt the unit so sanctioned; but such unit shall not constitute a village within the meaning of the Act, unless a notification has been issued by the Local Government in accordance with the proviso to section 3 (*10*).

52. *Erection of Boundary Marks.*—Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue Officer, for the definition of any boundary.

53. *Preliminary Record-writing.*—At this and the two following stages the draft record shall be prepared. The draft record shall consist of statements of rights which are hereinafter styled the "*khatians.*" There shall ordinarily be a separate *khatian* for each person interested, or each group of persons jointly interested, in the land whether as proprietor, tenure holder, *raiyat*, under-*raiyat* or occupant, and each *khatian* shall show the rights and liabilities of each person or group of persons according to the particulars which have been specified in the notification under section 101. At this stage all such particulars shall find entry, with the exception that no entry shall be made as to revenue or rent payable nor shall the class to which each tenant belongs be recorded. At this stage there shall also be prepared a field-index or *khasra* arranged according to the serial numbers of the fields in the village. This field-index shall not form part of the draft record. Disputes which are found to exist at this stage shall be decided in a summary manner by a Revenue Officer or a Kanungo on the basis of actual possession as far as such basis is applicable.

54. *Local Explanation.*—When the areas of the fields have been extracted and entered in the preliminary record, a copy of each *khatian* shall be made over by a Revenue Officer or a Kanungo to the person or persons concerned or their representatives. Each *khatian* shall then be examined on the ground, with reference to the village map, by a

Revenue Officer or Kanungo and shall be explained to the person or persons concerned or their representatives, if present. The Revenue Officer or Kanungo shall make such corrections as are necessary in the map, in the draft record, and in the copies of the *khatians* which have been distributed, if they can be produced for this purpose. Provisional entries of rent shall be made at this stage both in the office copies of the *khatians* and in the copies produced, but entries of status shall be deferred till attestation.

55. *Attestation.*—This stage of the operations shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the *khatians.* The attestation of each village shall be taken up at a convenient place in or near the village. Before attestation begins, a proclamation shall be published in the village, giving due notice to the landlords and tenants and calling on them to appear before the Revenue Officer on the date fixed, bringing with them their copies of the *khatians.* As each person appears before him, the Revenue Officer shall examine his *khatian,* read out all the important entries, make corrections where required, and see that the *khatian* is complete in all particulars. He shall decide disputes in a summary manner, and as far as applicable on the basis of actual possession. He shall enter with his own hand the class to which each tenant or group of tenants belongs, and the special conditions and incidents, if any, of the tenancy. He shall also with his own hand enter the revenue payable by each proprietor or group of proprietors and the rent payable by each tenant or group of tenants after ascertaining that such entry is of rent lawfully payable or deliverable or after amending it if he finds it incorrect. The Revenue Officer shall then sign and date the office copy of the *khatian,* and if the copy of the *khatian,* which was given to the person or persons concerned, is produced, the Revenue Officer shall see that it corresponds with the office copy as attested. When the Revenue Officer has completed the attestation of all the *khatians* of a village, he shall draw up a formal proceeding to this effect.

56. *Publication of the Draft Record.*—The Revenue Officer shall publish the draft record-of-rights by placing it for public inspection free of charge, during a period of not less than one month at such convenient place as he may determine. A proclamation shall previously be published in each village informing the landlords and tenants of the place at which the draft record of that village will be open to public inspection, the period during which it will be open to such inspections, and the last date on which objections may be filed.

57. *Objections under section 103A.*—Blank forms of objection shall be supplied free of charge and objections shall, as far as practicable, be made on such forms. Along with the original objection the objector shall file a copy or copies for service on all other persons who, in the opinion of the Revenue Officers, are materially interested in the case. The Revenue Officers shall issue notices informing the objector and all other persons so interested of the date and place fixed for hearing

the objection, and with each notice to a person other than the objector he shall forward a copy of the objection. Objections shall be disposed of in a summary manner and on the basis of actual possession, as far as such basis is applicable. The record shall contain the names of the witnesses examined and an abstract of the reasons for the decision. Objections shall not be disposed of in the absence of any of the parties materially interested, or their representatives, unless the Revenue Officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

58. *Preparation of a Settlement Rent-Roll.*—Where land revenue is being or is about to be settled, the Revenue Officer shall prepare a rent-roll for each village :—

(i) Before preparing the rent-roll the Revenue Officer shall issue a proclamation, informing the landlords and tenants of the time and place at which the preparation of the rent-roll will begin. If any tenants be absent, the Revenue Officer shall make no entry in the rent-roll which would have the effect of altering the rent of that tenant until a special notice has been duly served on that tenant.

(ii) When the Revenue Officer is preparing the Settlement rent-roll on the basis of a table of rates, he shall consult the landlord and tenants of the village regarding their own classification of the lands therein and regarding the relative capability of each class of land according to that classification. When specifying in the table of rates the rate of rent which is fairly and equitably payable in respect of each class of land, the Revenue Officer shall have regard to the statements of the landlords and tenants as to the classification and relative capability of lands, and shall also have regard to the rate of rent which is now being paid in respect of each class of land. Before settling any rent upon the application of the table of rates, the Revenue Officer shall consider the circumstances of the tenant and shall compare the total rent which he is now paying with the rent which he would pay according to the table of rates. He shall also consider whether the land held by the tenant is good or bad land of its class. When determining the final entries to be made in the rent-roll, the Revenue Officer shall read out, or cause to be read out in his presence, the principal entries relating to the holding and rent of each tenant whose rent is to be settled, and shall enter in the rent-roll with his own hand the fair rent settled for each such tenant.

(iii) The publication of the draft table of rates, if any, and of the draft settlement rent-roll shall be carried out in the manner and for the period described in the case of the publication of the draft record-of-rights.

(iv) Objections under section 104 B (3) or under section 104 E shall ordinarily be disposed of by the Revenue Officer, in or near the village in which the land is situated. The Revenue Officer shall record his reasons for each order on an objection. Appeals will lie against these orders to the superior Revenue authority mentioned in rule 47 or rule 48.

59. *Preparation of the Final Record.*—When all objections under section 103A have been disposed of, and when the settlement rent-roll, if any, has been prepared, sanctioned and incorporated with the record, and when the draft record has been corrected in accordance with the original and appellate orders on all objections, the Revenue Officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of *khatians* prepared on forms which are generally similar to the forms used for the *khatians* of the draft record. The *khasra* shall not form part of the final record. The final record shall be printed or prepared in manuscript according as the Local Government may, by general or special order, determine.

60. *Publication of the Final Record.*—The Revenue Officer shall publish the final record-of-rights by placing it for public inspection free of charge, during a period of not less than one month at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

61. *Distribution of printed Maps and of copies of the Final Record.*—The maps which have been prepared under rule 51 may be printed under the authority of the Local Government and may be distributed to public officers, to landlords and tenants and to others in such manner as the Local Government may from time to time, by general or special order, direct. Copies of the final record-of-rights, or of portions thereof, shall be printed or prepared in manuscript and shall be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may from time to time, by general or special order, direct. The printed maps, and the copies of the record or of portions thereof, which are distributed under this rule to persons other than public officers, shall be distributed free or on payment according as in the case of each local area the Local Government may direct. When payment is required, the sums so received shall ordinarily be adjusted against the expenses incurred on account of survey and settlement, should the accounts of those expenses still be open.

62. *Settlement of Fair Rents under Section 105-105A.*—(i) When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in this rule, the Revenue Officer shall adopt, as far as it is applicable,

the procedure laid down in the Code of Civil Procedure for the trial of suits.

(ii) When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being, or is not about to be made, the procedure laid down in this rule for recording and settling rents shall be followed, the manager of the estate or the tenure being regarded as the landlord.

(iii) When a landlord or tenant applies for the settlement of a fair rent, notice shall be served on every person interested in the application, together with a copy of the application, or extract therefrom or summary thereof, so far as the application concerns such persons.

(iv) With the consent of the Revenue Officer, any number of tenants occupying land under the same landlord in the same village may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord:

Provided that, if at any time it appears to the Revenue Officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application as he may think fit.

(v) On the date fixed for the settlement of fair rents, or any subsequent date to which the proceedings may be adjourned, the Revenue Officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105.

(vi) When a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *exparte*.

(vii) Where a landlord or a tenant appears and the fair rent is not settled under sub-section (*5*) or sub-section (*6*) of section 105, that is, by the acceptance by the parties of a rent proposed by the Revenue Officer, or by compromise, the Revenue Officer shall record evidence in the manner prescribed in clause (*f*) of section 148 of the Bengal Tenancy Act, 1885, for the trial of rent-suits, and shall settle a fair and equitable rent according to law:

Provided that in important cases the Revenue Officer may, in his discretion, record evidence at length.

(viii) When a fair rent has been settled under these rules, it shall be entered in the *khatian* as the rent payable in respect of the tenancy from the date prescribed by section 110.

(ix) It shall not be necessary for a Revenue Officer to draw up a separate decree with regard to the fair rent settled; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

(x) A proceeding under section 105A shall be considered as part of the proceeding under section 105 in which the issue arose, and the record of a proceeding under section 105A shall be considered as part of the record of the proceeding under section 105. In trying and deciding issues under Section 105A, the Revenue Officer shall record evidence in the manner prescribed in clause (vii) of this rule.

63. *Suits under section 106*—Proceedings under section 106 shall be dealt with in all respects as suits between the parties.

64. *Applications under section 103 for Survey and Record-of-rights.*—(i) These applications shall be made to the Collector of the district, and shall specify—

(*a*) the status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder;

(*b*) the particulars specified in section 102 of the Bengal Tenancy Act, in respect of which the application is made; and

(*c*) the number of tenants occupying the estate or tenure or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant is able to give these particulars).

(ii) If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Bengal Act VII. of 1876.

(iii) If the application is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

(iv) On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary. The Commissioner may call for further information or may require the application to be amended. If he considers that the application cannot be granted with advantage to the interests of all persons concerned, he may reject it. If he approves it, he shall forward the application with an expression of his opinion for the orders of the

Board of Revenue. A Commissioner rejecting an application shall record his reason for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.

(v) When an application is referred to the Board or an appeal is preferred, the Board may call for further information, if necessary, and shall pass such orders as they may think fit for allowing or rejecting the application.

(vi) As soon as an application is allowed, the Collector shall call upon the applicant to deposit one rupee per acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed.

(vii) If the amount deposited as above proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination. If the amount deposited proves insufficient to cover the cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.

(viii) In conducting operations under section 103, the Revenue Officer shall proceed in accordance with the rules for the guidance of officers acting under section 101.

CHAPTER VII.

General Scale of Fees.

65. *Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court Fees Act, 1870 (VII. of 1870)], and not being provided for by any other rule made under this Act a process fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, shall be levied from and paid by, the person at whose instance the process is issued before issue of the process. If a peon carries more than one process, involving charges for railway fare, boat-hire, &c., the sum leviable shall be charged in equal shares upon all the processes so carried. The rate at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause (2) of section 20 of Act VII. of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring

boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

If a peon is retained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

66. *Deposits of rent.*—For deposits of rent under section 61 (2), fees shall be levied according to the following scale:—

	Rs.			Annas.
On any sum not exceeding	5	...	...	1
On any sum exceeding but not exceeding	5 / 10	...	...	2
On any sum exceeding but not exceeding	10 / 25	...	...	4

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder, provided that if the remainder does not exceed Rs. 10, the charge for it shall be only two annas, provided also that in no case shall the fee exceed the sum of Rs. 5.

67. *Distraint of Crops.*—The following scale of charges is prescribed on account of process for distraint and sale under section 134:—

(*a*) in respect of the warrant of distraint—8 annas:

(*b*) in respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day; and

(*c*) in respect of action taken under clause (2), Section 126, for the reaping, storing, or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing floor or store-house, if necessary.

In addition to the charges under clauses (*a*), (*b*) and (*c*) above, railway-fare, boat-hire and ferry-charges may be levied, when necessary, as under rule 65.

SCHEDULE I.

FORM 1.

APPLICATION UNDER SECTION 80 OF ACT VIII. OF 1885.

(*See Rule 13.*)

To

The Collector of

The application of son of resident of for registration of an improvement under section 80 of the Bengal Tenancy Act, 1885, (VIII. of 1885).

Name of pargana and estate in which improvement has been effected.	Name of villages in which improvement effected.	Nature of applicant's interest in land improved.	Nature of improvement.	By whom executed and at whose expense.	Cost of improvement.	When executed.	Names of all tenants benefited in each village.
1	2	3	4	5	6	7	8

A. B.,
Landlord.

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

To

The Collector of

LET this notice be served on A. B., resident of , as required by section $\frac{12}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,
Registering Officer.

To

A. B., Resident of

TAKE notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time it will be paid to you or transferred to your revenue account on application. If

it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferer of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9	10
								Rs. a. p.	

C. D.,
Registering Officer.

ORDERED that this notice be served on the above-named landlord.

E. F.,
Collector.

[REVERSE OF THE FORM.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Name of person to whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				Rs. A. P.

FORM 3.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

To The Collector of

LET this notice be served on A. B., &c., residents of as required by section $\frac{12}{18}$ of Act VIII. of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury: chalan appended.

C, D., *Registering Officer.*

To A. B., ETC., RESIDENTS OF

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [or *raiyati* holding at fixed rates (as the case may be)] as specified below, of which you are stated to be a joint-landlord, has been registered, and that the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name and residence of trasferee of tenure or raiyati holding at fixed rates.	Name, father's name and residence of transferer of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee	Remarks.
1	2	3	4	5	6	7	8	9	10
								Rs. a. p.	

C. D., *Registering Officer.*

ORDERED that this notice be served on the above-named landlords.

E. F., *Collector.*

[REVENUE OF THE FORM.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Names of persons to whom to be served	Details of cash receipts with amount.
1	2	3	4	5
				Rs. a. p.

FORM 4.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section $\frac{13}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,
Judge.

To

A. B., RESIDENT OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenancy which is alleged to be a tenure (or raiyati holding at fixed rates) specified below of which you are alleged to be the landlord, has been confirmed (or made) and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in doposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not

claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or raiyati holding at fixed rates.	Date of confirmation of sale or the decree or order absolute foreclosure.	amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9
							Rs. a. p.	

C. D.,

Judge.

ORDERED that this notice be served on the above-named landlord.

E. F.,

Collector,

FORM 5.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24*)

(*Where there is more than one landlord and no common agent or manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of , as required by section $\frac{13}{18}$ of Act VIII. of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover

and obtaining an acknowledgment have been paid into the Treaury: chalan appended.

C. D.,
Judge

To

A. B., ETC., RESIDENTS OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenure (or raiyati holding at fixed rates) specified below, of which you are alleged to be a joint-landlord, has been confirmed or made and the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some other persons authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or raiyati holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the above-named landlords.

E. F.,
Collector.

FORM 6

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or manager.*)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B. resident of . The landlord's fee of Rs. , money-order fee of Rs. ; and Rs. , for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,

Tenure-holder or raiyat holding at fixed rates.

To

A. B., RESIDENT OF

TAKE notice that I have succeeded to the tenure [or *raiyati* holding at fixed rates (as the case may be)] specified below, of which you are the landlord and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estate.	Name of estate.	Description of tenure of raiyati holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known, of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name, and residence of successor to tenure or raiyati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D., *Resident of*

ORDERED that this notice be served on the above-named A. B.

E. F., *Collector.*

FORM 7.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

To THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., etc., residents of . A copy for each joint-landlord is herewith submitted. The landlord's fee of Rs , money-order fees of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,

Tenure-holder or raiyat holding at fixed rates.

To A. B., &c., RESIDENTS OF

TAKE notice that I have succeeded to the tenure [or *raiyati* holding at fixed rates (as the case may be)] specified below, of which you are a joint-landlord. The landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi No. of estates.	Name of estates.	Description of tenure or raiyati holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name, and residence of successor to tenure or raiyati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D., *Resident of*

ORDERED that this notice be served on the above-named A. B.

E. F., *Collector.*

FORM 8.

NOTIFICATION UNDER SECTION 87 OF ACT VIII. OF 1885.

(*See Rule 37.*)

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned, and that I am about to re-enter upon it accordingly.

Dated }

Landlord.

Schedule of Property.

Name of village and pargana in which situated.	Area and boundaries of holding.	Rent of holding.
1	2	3

FORM 9.

REQUISITION TO COLLECTOR FOR A VERIFIED OR CERTIFIED COPY OF, OR EXTRACTS FROM, THE RECORD-OF-RIGHTS UNDER SECTION 148 (*b*-1) OF THE BENGAL TENANCY ACT, 1885, AS AMENDED UP TO DATE.

(*See Rule 39.*)

BE pleased to furnish to this Court on or before the a certified copy of, or extract from, the record-of rights relating to the undermentioned tenancy, which is required for reference in suit No. of

A. B.,
Judge.

Name of village.	Thana.	Thana No.	Tauzi No. and if revenue-free Register No.	Name of landlord at the date of publication of the record-of-rights.	Name of tenant at the date of publication of the record-of-rights.	No. of khatian or reference to other document forming part of the record-of rights of which copy or extract is required.	Remarks
1	2	3	4	5	6	7	8

THE copy required is sent herewith.

C. D.,
Collectorate Record-keeper or other officer authorised to certify.

COPY received.

E. F.
Sarishtadar, Civil Court.

SCHEDULE II.

District.	Local areas.	Marts at which prices to be taken.
1	2	3
DACCA DIVISION.		
Dacca ...	Sadar subdivision	Posta hat.
	Manikganj subdivision ...	Manikganj Dasora Bazar.
	Narayanganj "	Madanganj.
	Munshiganj "	Mirkadim.
Mymensingh ...	Sadar "	Nasirabad.
	Jamalpur "	Jamalpur.
	Tangail "	Kagmari.
	Netrokona "	Netrokona.
	Kishoreganj "	Kishoreganj.
Faridpur ...	Sadar "	Faridpur.
	Goalundo "	Rajbari.
	Madaripur "	Madaripur.
	Gopalganj "	Gopalganj.
Bakarganj ...	Sadar "	Barisal.
	Pirojpur "	Pirojpur.
	Patuakhali "	Patuakhali (New Bazar)).
	Dakshin Shabajpur subdivision ...	Bhola.
CHITTAGONG DIVISION.		
Cittagong ...	Sadar subdivision ...	Buxy Hat.
	Cox's Bazar " ...	Cox's Bazar.
Tippera ...	Sadar " ...	Rajganj (Comilla.)
	Brahmanbaria " ...	Brahmanbaria.
	Chandpur " ...	Chandpur.
Noakhali ...	Sadar " ...	Kalitara Hat.
	Feni " ...	Raja's Hat (Feni).
RAJSHAHI DIVISION.		
Rajshahi ...	Sadar subdivision ...	Shaheb Bazar.
	Naugaon " ...	Naugaon.
	Nator " ...	Nator.
Dinajpur ...	Sadar " ...	Railway Bazar Hat.
	Thakurgaon " ...	Thakurgaon.
	Balurghat " ...	Balurghat.

SCHEDULE II.—RAJSHAHI DIVISION—(*contd.*)

District.	Local areas.	Marts at which prices to be taken.
1	2	3
Jalpaiguri ...	Sadar " ...	Din Bazar.
	Alipur " ...	Alipur.
Rangpur ...	Sadar " ...	Rangpur.
	Nilphamari " ...	Nilphamari.
	Kurigram " ...	Kurigram.
	Gaibandha " ...	Gaibandha.
Bogra ...	Bogra district " ...	Kalitara Hat.
Pabna ...	Sadar " ...	Pabna.
	Sirajganj " ...	Sirajganj.
Malda ...	Malda district " ...	Balia Nowabganj.

APPENDIX VI.

Rules for the Registration of Documents under the Bengal Tenancy Act.

GENERAL LETTER NO. 7768.

FROM NAWAB SYUD MAHOMED, KHAN BAHADUR,

Inspector-General of Registration, Bengal.

TO THE REGISTRAR OF

Dated Calcutta, the 2nd December 1909.

SIR,

I HAVE the honour to forward herewith, for the information and guidance of registering officers, a copy of the revised rules for the *registration* of documents referred to in the Bengal Tenancy Act, 1885 (VIII. of 1885), which should be followed in supersession of the rules contained in Chapter IV. of the Bengal Registration Manual, 1901. The issue of these revised rules has become necessary in consequence of the amendment of the Bengal Tenancy Act of 1885 by Act I. (B.C.) of 1907, and of the publication of revised Government rules under the Bengal Tenancy Act, 1885. The portions of the revised Government rules, which relate to the service and forms of notices under sections 12 and 18 of the Bengal Tenancy Act, disposal of the landlord's and other fees, and the notices of incumbrances under section 176 of the Tenancy Act (published in the *Calcutta Gazette* of 6th November 1907, as modified by Notifications Nos. 4606L.R., and 167T.R., dated the 24th November 1908 and 22nd April 1909 respectively) have been reproduced in Appendix A to the rules for the registration of documents.

2. I beg, at the same time, to forward a copy of the instructions framed by the Board of Revenue, Lower Provinces, which should be carefully noted and followed. It is hoped that with these instructions, which have been drawn up after consultation with some Collectors of districts, and with the set of rules mentioned in paragraph I above, no difficulty will be experienced by registering officers in giving effect to the changes introduced in section 12 by the amending Act I (B.C.) of 1907.

3. Copies of sections 12 and 18 of the Bengal Tenancy Act, as amended by the Act of 1907, are enclosed for reference by registering officers.

I have the honour to be,

SIR,

Your most obedient servant,

SYUD MAHOMED,

Inspector-General of Registration, Bengal.

Sections 12 and 18 of the Bengal Tenancy Act, 1885.

12. (*1*) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

(*2*) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift, or usufructuary mortgage a permanent tenure, unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

* [together with the costs necessary for the transmission of the landlord's fee to the landlord].

(*3*) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee,* [the costs necessary for the transmission of the same, and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be* [transmitted] to, and the notice to be served on, the landlord* [named in the notice] in the prescribed manner.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

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* These words in square brackets were added by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907).

RULES FOR THE REGISTRATION OF DOCUMENTS REFERRED TO IN THE BENGAL TENANCY ACT, 1885 (VIII. OF 1885).

1. In these rules,— **Definitions.**

(1) "the Registration Act" means the Indian Registration Act, 1908;

(2) "the Registration Fee-book" means the fee-book prescribed under the Registration Rules;

(3) "the Registration Rules" means the rules made under section 69 of the Indian Registration Act[1];

(4) "the Tenancy Act" means the Bengal Tenancy Act,[2] 1885; and

(5) "the Tenancy Act Fee-book" means the book prescribed by rule 7 of these rules.

2. A document presented for registration under section 12 or section 18 of the Tenancy Act must be examined, first, with reference to the Registration Rules, and next with reference to the particular section of the Tenancy Act under which it is presented; and care must be taken not to carry out the procedure prescribed by section 12 of that Act unless it appears on the face of the document itself that the tenure transferred is a permanent tenure, or that the holding transferred is a holding at a rent, or rate of rent, fixed in perpetuity, **Examination of document.**

3. (1) If any sub lease executed by a raiyat and purporting to create a term exceeding nine years is presented for registration, it shall be returned at once, without registration, with a note to the following effect recorded on its back, viz.:— **Refusal of registration of sub-lease executed by a raiyat and creating a term exceeding nine years.**

"Inadmissible—see section 85 (2) of the Tenancy Act."

(2) The registering officer shall sign, seal and date the said note, and shall enter in Book 2 the reason for his refusal to register the document.

4. (1) In certifying the admissibility to registration of any document referred to in the Tenancy Act, the registering officer shall quote the appropriate section of the Registration Rules as well as the particular section of the Tenancy Act under which the document is admitted. **Endorsement of certificate of admissibility.**

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[1] Act XVI. of 1908. [2] Act VIII. of 1885.

Thus: *Admissible under Registration Rule , also under section of the Tenancy Act. Correctly stamped under the Indian Stamp Act, 1899, Schedule I. No.*

(2) The fees levied shall be noted below the certificate of admissibility, in the following manner, viz.—

	Rs.	As.
(a) Registration fee	.....	
(b) Landlord's fee	.....	
(c) Money-order commission on landlord's fee	.....	
(d) Process fee under s. 12 (2), B. T. A. ...	.....	
(e) Fee under s. 176, B. T. A. ...	.....	
Total ...	.....	

Sub-Registrar.

Receipts for fees.

5. (1) The amounts of the fees referred to in clauses (b), (c), (d) and (e) of rule 4 shall be entered in the receipt for the document granted under section 52 of the Registration Act.

(2) In calculating the amount of landlord's fee, pies shall be omitted.

Entries in Registration Fee-book.

6. (1) All documents referred to in the Tenancy Act, which are presented for registration, shall be entered in the Registration Fee-book in the order of their presentation, in the same manner as other documents presented under the Registration Act.

(2) The registration fee shall be entered in column 7 of the said book, with the necessary details, and shall be included in the total registration fees for credit to the Government.

(3) The serial number of the document in the Tenancy Act Fee-book shall be noted in the column of remarks in the Registration Fee-book, with the letters T. A. for reference.

Form of Tenany Act Fee-book.

7. The fees referred to in clauses (b), (c), (d) and (e) of rule 4 shall not be shown in the registration Fee-book, but shall be shown separately in a fee-book, to be called the Tenancy Act Fee-book, kept in the following form—

Tenancy Act Fee-book.

Serial number of notice	Serial number of document in Book I.	Date of presentation.	From whom received.	Nature of document.	Annual rent.			Landlord's fee.		Money-order commission for transmission of landlord's fee.		Process-fee		Number and date of chalan or money-order used for remitting the sums referred to in columns 7, 8 and 9 to the Treasury or Sub-Treasury.	Number and date of letter sending notices to the Collector.	Signature of the registering officer.	REMARKS.
1	2	3	4	5	6			7		8		9		10	11	12	13
					Rs.	As.	P.	Rs.	As.	Rs.	As.	Rs.	As.				

Entries in Tenancy Act Fee-book

8. (*1*) Column 1 of the Tenancy Act Fee-book must be filled up on the presentation of the document, whether the particular notice is ready or not; and the number in that column must be transferred to the notice when it is ready.

(*2*) Columns 3 to 9 must also be filled up immediately on the presentation of the document.

(*3*) Columns 10 and 11 must be filled up on the dates, respectively, on which the sums referred to in columns 7, 8 and 9 are forwarded to the Treasury or Sub-Treasury, as the case may be, and the notices are sent to the Collector.

(*4*) The registering officer must affix his initials to each entry, in column 12 of the Tenancy Act Fee-book.

Daily totals to be posted in Cash-book.

9. Columns 7, 8 and 9 of the Tenancy Act Fee-book shall be totalled daily, and the daily totals shall be posted in the Cash-book under the heads of landlords' fees and other charges in detail.

Remittance of landlords' fees and other sums to Treasury.

10. (*1*) The landlord's fee and other sums shall be remitted by the registering officer to such Treasury or Sub-Treasury, as may be directed by the Registrar, under a covering letter to the following effect:—

To—THE $\frac{\text{TREASURY}}{\text{SUB-TREASURY}}$ OFFICER OF

SIR,

Please receive for deposit Rs. , being the amount of landlords' fees deposited by , for payment to , the landlord or to some person authorized on his behalf to receive it. The amount should remain at his credit, and should be paid to him, or sent to him by money-order or transferred to his revenue account, on application by him. Other sums, amounting to Rs. (namely), are also forwarded herewith for credit in the $\frac{\text{Treasury}}{\text{Sub-Treasury}}$.

Seal.

I have, etc.,

Sub-Registrar.

(*2*) Such remittances shall be made with the same regularity as is required in the case of remittance to the Treasury of ordinary registration receipts:

Provided that a remittance shall not be made until the execution of the document to which it relates has been admitted and the executant identified.

Chalans to accompany such remittances

11. (*1*) Two separate chalans shall be prepared, each in triplicate, and sent to the Treasury or Sub-Treasury with all remittances referred to in rule 10, one for the landlords' fees and Money-order

commissions, both of which are to be placed in revenue deposit and the other for the process fee, the following details being entered on the reverse of each chalan:—

A.

Details of landlords' fees and money-order Commissions deposited.

1	2			3	4
Serial number of chalan.	Amounts of landlords' fees and money-order Commissions deposited.			Name of depositor.	Name of the landlord to whom payable.
	Rs.	AS.	P.		

B

Process fee.

1	2	3	4	5		
Serial number of chalan.	Number of notice.	Name of depositor.	Name of person on whom notice is to be served.	Process fee.		
				Rs.	AS.	P.

(2) When a remittance referred to in rule 10 is made by money-order, the said chalans shall be forwarded simultaneously by post.

(3) The Treasury or sub-Treasury Officer shall retain one of the copies of each chalan, and shall return the other two copies, duly receipted, to the registering officer.

(4) The registering officer shall attach one of the copies so returned to him to the covering letter prescribed by rule 13, and shall retain the other in his office.

Preparation of notices under sections 12 and 18 of the Tenancy Act.

12. (1) In the case of documents relating to the transfer of tenures under section 12, or of raiyati holdings at fixed rates under section 18, of the Tenancy Act, notices to the landlord shall be prepared in accordance with rules 24 and 25 of the General Rules under the Tenancy Act, reprinted in Appendix A to these rules as soon as execution has been admitted, the executant identified, and the endorsements referring thereto have been recorded.

(2) The forms of the notices are shown in Schedule I. in Appendix A.

(3) When two or more persons are joint landlords and have no common agent or manager, a notice shall be prepared for each joint landlord.

(4) When it is necessary to issue more notices than one, only one serial number shall be entered in column 1 of the Tenancy Act Fee-book. There will thus be one original notice, in which the names of all the landlords concerned will be entered; and as many copies of this original notice shall be made as may be necessary, each copy bearing the serial number of the original notice.

(5) One copy of the original notice shall be filed for reference in the Registration office, a note being made upon it of the number of copies sent.

Letter forwarding notice to Collector.

13. (1) The notice to the landlord in the form shown in Schedule I in Appendix A, with one copy of each chalan attached thereto, as prescribed in rule 11, sub-rule (4), shall be forwarded for service upon the landlord with a covering letter to the Collector of the district* in which is situated the Registry office in which the deed is registered.

* *Vide* Board's Instruction No. 3.

(2) The form of the covering letter is shown in Schedule I in Appendix A.

Postal charges how to be met.

14. Postal charges, for sending copies of notices to the Collector for transmission to the landlords and for remitting landlords' fees and other cash receipts to the Treasury or Sub-Treasury, shall be met from the Contract Contingent grant of the Registration Department.

Refund of fees.

15. (1) Any fees which have been realised in respect of any document, and which remain in the hands of the registering officer, may be refunded if the document is refused registration, a note to that effect being made in column 13 of the Tenancy Act Fee-book.

(2) Such refunds need not be entered in the monthly returns prescribed by rule 16.

16. (*1*) A statement of operations under sections 12 and 18 of the Tenancy Act shall be submitted monthly by Sub-Registrars to the Registrar. **Monthly returns.**

(*2*) A similar statement for the whole district, countersigned by the Collector and the Treasury Officer, shall be submitted monthly by each Registrar to the Inspector-General.

(*3*) The said statements shall be compiled from the Tenancy Act Fee-book, and shall be in the form prescribed in Appendix B to these rules.

Notification of incumbrances to landlord.

17. (*1*) Every application under section 176 of the Tenancy Act for notification of an incumbrance to a landlord must, whether made verbally or in writing, be accompanied by— **Fees to accompany application for notification of incumbrance to landlord.**

(*a*) the fee fixed under the said section,

(*b*) the fee (if any) payable under Article (H) of the schedule of fees under the Registration Act for a search, and

(*c*) the fee payable under Article (1) of the said schedule for a copy of the instrument creating the incumbrance.

(*2*) A receipt for the said fees shall be granted, in the form of receipt prescribed for use under section 52 of the Registration Act, with such alterations as may be required.

(*3*) The fee referred to in clause (*a*) of sub-rule (*1*) shall be entered in the Tenancy Act Fee-book, and the serial number of the copy sent to the landlord shall be entered in column 13 of that book.

(*4*) The fees referred to in clauses (*b*) and (*c*) of sub-rule (*1*) shall be entered in the Registration Fee-book, and not in the Tenancy Act Fee-book.

APPENDIX A.

EXTRACTS FROM THE RULES MADE UNDER THE BENGAL TENANCY ACT, 1885.

(See Rule 12.)

Chapter V.—Service of Notices.

24. *Sections 12 ... and 18.*—Notices under sections 12 ... and 18 shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I (Forms 2, 3 ...). Each notice forwarded to the Collector by a registering officer ... shall be supported by a chalan showing the payment into the Treasury of the landlord's fee, money-order commission and any other fees or charges realised in cash. **Contents of notices under sections 12, ... 18.**

25. (*a*) Where there is a sole landlord, or where two or more persons are joint-landlords and have a common agent such as is referred to in section 188, or a common manager appointed under section 95, **Manner of service.**

the notices shall be served on such sole landlord or his agent, or on such common agent or manager, as the case may be.

(*b*) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

Posting of notice.

26. In each case under the preceding rule the notice shall be forwarded by post, in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898) and an acknowledgment obtained.

Transmission of landlord's fee by money-order.

27. In the cases mentioned in rule 25 (*a*), the landlord's fee shall be transmitted by money-order to the sole landlord or his agent, or to the common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I.

Deposit of fee, where there is refusal or no application.

28. If, in cases where the amount of landlord's fee is transmitted by money-order, the sole landlord or his agent or the common agent or manager refuses to accept payment thereof, and in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and on the expiry of that time it shall be forfeited to the Government.

Verfication of payment.

29. The Collector or any other officer who signs the order for the notice to be served, shall satisfy himself, by reference to the chalan accompanying it in accordance with the provisions of rule 24, that the landlord's fee and other fees and charges realised in cash have been paid into the treasury.

Process fee under section 12 (2).

29A. When the tenancy is held under a single landlord, or under two or more landlords having one common agent or a common manager such as is referred to in rule 25 (*a*), the process fee to be paid under sub-section (*2*) of section 12 shall be 12 annas, inclusive of the cost of posting the notice referred to in sub-section (*3*) of section 12, of registering it under the Indian Post Office Act, 1898, and of obtaining an acknowledgment of its receipt.

When the tenancy is held under two or more landlords not having one common agent or common manager, the said process fee of annas 12 shall be paid in respect of the original notice in Form 3, and a further process fee of four annas shall be paid in respect of each landlord or group of landlords having a common agent or a common manager on whom the service of a special notice is required by rule 25 (*b*).

Notification of incumbrances to landlord.

38A. (1) When a tenancy is held under a single landlord, or under two or more landlords, having one common agent or common manager, such as is referred to in rule 25 (*a*), a copy of the instrument referred to in section 176 shall be served on such landlord or on such agent or manager as the case may be.

(2) When a tenancy is held under two or more landlords not having one common agent or common manager as aforesaid, a copy of the said instrument shall be served—

(a) if none of them have one common agent or common manager as aforesaid then on each landlord, or

(b) if some of them have one common agent or common manager as aforesaid then on such agent or manager and also on each of the landlords who have no such agent or manager.

(3) The said copy or copies shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, 1908. V. of 1908.

(4) The fee to be paid for such service shall be—

(i) in the cases referred to in sub-rule (1), one rupee; and

(ii) in the cases referred to in sub-rule (2), one rupee for the first copy of the instrument and four annas for each additional copy.

Schedule I.

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

APPENDIX A.

(*Where there is a single landlord or common agent or common manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section $\frac{12}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury: chalan appended.

C. D.,

Registering-officer.

To

A. B., RESIDENT OF

TAKE notice that the transfer of the tenure [*or* raiyati holding at fixed rates (*as the case may be*)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's Office for three years from the date of the service of this notice. During the time it will be paid to you or transferred to your revenue account on

application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government—

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
									Rs. As. P.

C. D.,
Registering-officer.

ORDERED that this notice be served on the above-named landlord.

E. F.
Collector.

(REVERSE OF THE FORM.)

Serial number of chalan.	Number of notice.	Name of depositor.	Name of person on whom to be served.	Details of cash receipts, with amount.
1	2	3	4	5
				Rs. As. P.

FORM 3.

Notice under sections 12 and 18 of Act VIII. of 1885.

(see Rule 24.)

APPENDIX A.

(*Where there is more than one landlord and no common agent or manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., etc. residents of as required by section $\frac{12}{18}$ of Act VIII. of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee of Rs. money-order fee of Rs. and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury: chalan appended.

C. D.,

Registering-officer.

To

A. B. &c., RESIDENTS OF

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [*or* raiyati holding at fixed rates (*as the case may be*)] as specified below, of which you are stated to be a joint-landlord, has been registered, and that the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some person authorized on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire

it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
									RS. AS. P.

C. D.,

Registering-officer.

ORDERED that the notice be served on the above-named landlords.

E. F.,

Collector.

(REVERSE OF THE FORM.)

Serial number of chalan.	Number of notice.	Name of depositor.	Name of person on whom to be served.	Details of cash receipts, with amount.
1	2	3	4	5
				RS. AS. P.

APPENDIX B.

Statement showing the operations under sections 12 and 18 of the Tenancy Act, the *Registry Office at* *for the month of* 190 .

(See rule 16.)

1	2		3		4				5	6		7		8		9		10		11		12	13	14
	Deeds of gift registered.		Deeds of sale registered.		Usufructuary mortgages.																			
					(a)	(b)	(c)	(d)																
Name of Office.	Of permanent tenures.	Of raiyati holdings at fixed rates.	Of permanent tenures.	Of raiyati holdings at fixed rates.	Of permanent tenures of value of Rs. 100 or upwards.	Of permanent tenures of value below Rs. 100.	Of raiyati holdings at fixed rates of value of Rs. 100 or upwards.	Of raiyati holdings at fixed rates of value below Rs. 100.	Total number of registrations under sections 12 and 18.	Amount of landlord's fees realized during the month.		Other cash receipts during the month.		Total amount of fees, &c. in hand at the beginning of the month.		Total of columns 6, 7 and 8.		Total amount of fees, &c., remitted during the month to the Treasury Officer.		Total amount of fees, &c., in hand at close of the month.		Number of notices sent during the month to Collector.	Number of notices* pending from previous month.	Number of notices* pending at close of month.
										Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.	Rs.	A.			

* Original notices only should be entered [see Rule 12 (4).]

(Countersigned) (Countersigned.)

Treasury Officer. *Collector* *Registrar.*

INSTRUCTIONS.

(FRAMED BY THE BOARD OF REVENUE, L. P.)

THE attention of Sub-Registrars is invited to Chapter V. and to Schedule I. of the Government Rules under the Bengal Tenancy Act of 1885, published in Government Notification No. 2705T.R., dated 31st October 1907, at pages 1819 to 1847 of Part I. of the *Calcutta Gazette* of 6th November 1907, and to Notifications Nos. 4606 L.R., dated the 24th November 1908, and 167 T.R., dated the 22nd April 1909.

2. The following are the instructions to be observed for working the rules:—

Rules 24 and 29A, Chapter V. of the Rules.—A sufficient supply of forms 2 and 3 prescribed in Schedule I. to the Rules, as well as of Money-order Form 5, should be kept in stock. The Sub-Registrars will place the landlord's fee and money-order commissions in revenue deposit by one chalan. The process fees realized under Rule 29A will be credited by them to Government by a separate challan. One copy of both chalans duly receipted by the Treasury will accompany the notice which is sent to the Collector or Subdivisional Officer. A money-order form duly filled in should also be sent along with the notice. This may be filled in by the party at whose instance the landlord's fee and the notice are to be transmitted to the landlord.

3, There should be two separate chalans, each in triplicate, in support of each notice: one copy is intended for the Treasury, one for the Registry office, and the third for the Collector or the Subdivisional Officer to be sent with the notice. When a Sub-Registrar sends his remittance by money-order, he will simultaneously forward by post to the Treasury or Sub-Treasury Officer, as the case may be, chalans in triplicate in support of each notice and covering the amount remitted by money-order. The Treasury or Sub-Treasury Officer shall retain one copy of each chalan and shall return the other two copies duly receipted to the Sub-Registrar.

4.—*Rules 25 (a) and 27.*—It will be seen that the landlord's fee is to be transmitted by money-order to a landlord only in two cases: (1) where there is a sole landlord, (2) where all the landlord's have one common agent or manager. In these cases and in these cases only the money-order form should be sent duly filled in, the spaces designed for the signature of the remitter, *i.e.*, the Collector or Subdivisional Officer, being left blank.

5. At the top of each notice, the name and address of the landlord, including the post office, should be written in full and legibly; where there are more landlords than one the names and addresses of all should be mentioned. In cases in which there are two or more persons as joint landlords, having a common agent such as is referred to in section 188 (not the ordinary *gomashta* or *tasildar*, who has no legal power from the

landlord), or a common manager appointed under section 95, the name and address of such common agent or manager as the case may be, besides the name and address of each joint landlord, should be mentioned in the body of the opening part of the notice.

6. *Rule 25 (b)*.—No apportionment of landlord's fee should be made between the joint landlords.

7. *Notice of transfer (Form 3, Schedule I. to the Rules)*.—Where there is more than one landlord and no common agent or manager, there should be noted in the column 10 (remarks) the number and date of the deposit in which the landlord's fee and the money-order commission are held, so that, on a joint application from the landlords, the latter may specify in it particulars with a view to the withdrawal and transmission of the fee to the person authorized by them to receive the same.

8. For instructions on any other point the Registrar should be addressed. In particular each Sub Registrar in a subdivision of a district should ascertain whether the landlord's and other fees should be remitted by him to the District Treasury or to the Sub Treasury of his subdivision. He should ascertain also whether the notices are to be sent to the Collector or the Subdivisional Officer.

APPENDIX VII.

RULES BY THE HIGH COURT UNDER SECTIONS 100 AND 142 OF ACT VIII. OF 1885.

Published in the Calcutta Gazette of July 28, 1886. Part I. p. 885.

RULES UNDER SECTION 100.

1. Every manager, appointed under Chapter IX. of the Bengal Tenancy Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

2. The manager shall pay the Government revenue, rent, and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

3. No manager shall have power to sell or mortgage any property nor shall he grant or renew a lease for any period exceeding three years without the express sanction of the District Judge: Provided that this rule shall not render valid any lease for a shorter time than three years, if the District Judge directs by a written order that his sanction is to be obtained as regards all leases granted by the manager.

4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

5. No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

Rules under Chapter XII.

6. All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (2), shall be on oath or affirmation.

7. All such applications, and all notices of distraint under section 141, shall be entered in a register to be called the "Distraint Register," which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint; and a copy of the notice under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.

Form of Distraint Register prescribed by Rule 7.

Serial number of		Date of application to distrain, or of notice of distraint under section 141.	Name and address of the applicant under section 121, or of the person giving notice under section 141.	Name and address of the defaulter.	Amount of arrear claimed, and period in respect of which it is claimed.	Purport of the order passed, and date on which it is passed.	Name of the officer deputed to distrain, or to take charge of property distrained.	Date of distraint.	Date of sale proclamation.	Date of sale.	Amount realised by sale.				Amount (if any) deposited under section 136.		Remarks.
Application under Section 121.	Notice under section 141.										Arrear.	Costs.	Surplus.	Total.	Arrear.	Costs.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

NOTE.—In the column for remarks shall also be entered the date of each remand granted (C. O. No. 6 of 20-2-1902.)

8. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141, must in all cases be able to read and write the language of the district.

9. The written demand under section 125 shall be framed in accordance with the entries contained in the application or notice referred to in Rule 2.

10. The notification of distraint directed in section 124, Act VIII. 1885, shall be published—

By fixing up in a conspicuous part of the holding, or other place, in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

11. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due; and it shall direct any person intending to reap, gather or store the crop of produce, if unreaped or ungathered, or intending to do any other act necessary for its preservation, to give due notice of his intention to the person who has been placed in charge.

12. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

13. In the event of it being necessary for the distraining officer or the officer placed in charge of distrained property, to reap, gather or store any crops or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end.

14. The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each; and, if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where and the time when the sale will be held.

15. When the sale is concluded and the sale-proceeds are realised, the officer who held the sale shall, after paying the cost of the distraint and sale, as directed in section 134, forthwith pay the balance into Court.

16. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1); and, if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so.

17. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down.

18. All officers deputed to distrain property under this Chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or, if there is no such post office, shall, immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person (if any) placed in charge of the crop, and the day fixed for the sale, or, if the sale has taken place, the day on which it took place. He shall also immediately on his return file an account of all money received and disbursed by him, together with the receipt for the same and the record of the biddings at the sale, if a sale has taken place.

19. Every person, distraining produce by virtue of the authority conferred on him under section 141 of Act VIII, 1885, shall give notice of such distaint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce, in a tabular form which shall contain the following particulars:—

(*a*) The name and address of the person at whose instance the distraint was made, and a description of his interest in the property, whether as proprietor, tenure-holder or *raiyat*.

(*b*) The name of the defaulter, and of the place in which he resides, or was known to be last residing.

(*c*) The amount of the arrear, with interest, if any, and the period in respect of which it is claimed.

(*d*) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.

(*e*) The description and approximate value of the produce distrained, and, if the same has been reaped or gathered, the place in which it is stored.

(*f*) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.

(*g*) The date on which the distaint was made.

(*h*) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered.

FORM OF DECREE.

ISSUED BY AUTHORITY OF THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

(Civil.)

RULE No 2 OF 1906.

Rules made with the approval of the Governor-General in Council under Section 143, Bengal Tenancy Act, VIII. of 1885:

1. Notwithstanding section 644, Code of Civil Procedure, in original decrees in suits between landlord and tenant for the recovery of rent, in the place of Form No. 127 (Simple Money Decree) prescribed by the 4th Schedule of the Code of Civil Procedure, the following form of decree shall be used:—

IN THE COURT OF

RENT SUIT No. OF 19

Plaintiff.

versus

Defendant.

Claim for Rupees on account of rent
for the period from to at the yearly rent
of Rs. in respect of land held in Mauza , Pargana

*Enter here date of Judgment.

In the presence of the parties on* it is ordered and decreed that the sum of Rupees (which includes rent calculated at a yearly rental of Rs. and interest at 12 per cent, damages at per cent.) be paid by to together with interest at per cent. until realization and that costs be paid as directed at the foot of the Schedule given below.

Costs of the suit.

Plaintiff.	Amount.			Defendant.	Amount.		
	Rs.	A.	P.		Rs.	A.	A.
1. Stamp for plaint ...				Stamp for power ...			
2. Stamp for power ...				Stamp for petition ...			
3. Stamp for Exhibits ...				Pleader's fee ...			
4. Pleader's fee on Rs....				Subsistence of witnesses			
5. Subsistence for witnesses for attendance ...				Service of process ...			
6. Service of process ...							
TOTAL ...				TOTAL ...			

Cost Rs. payable to with interest at per cent. until realization.

Notice to take back documents.

The parties in this case are hereby required to take back, as soon as this decree shall have become final, the documents produced by them which are exhibits in the case. If they fail to take them back, the documents will be destroyed, either when the record is destroyed, or on the expiry of one year from the date of this decree becoming final (Rules 35, 35A and 35B, Chapter III. pages 81 and 82 of the High Court's General Rules and Circular Orders, Civil).

Signature of the Presiding Officer.

2. Notwithstanding the provisions of section 206 of the Code of Civil Procedure, it shall not be necessary for a Court in suits between landlord

and tenant for the recovery of rent to draw up a formal decree as required by that section in suits where—

(*a*) the suit is dismissed for default in the absence of both parties, and

(*b*) the claim is satisfied before the date of hearing of such suit has arrived.

3. Notwithstanding the provisions of section 579, Civil Procedure Code, it shall not be necessary to include in the decree of the Appellate Court in suits between landlord and tenant for the recovery of rent, the memorandum of appeal required by that section.

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ADDENDA.

Amendments, Rulings, Rules relating to the Bengal Tenancy Act up to January 1916.

I.—AMENDMENT.

Bengal Public Demands Recovery Act, III. of 1913.

Amendment of Chapter XIIIA. of the Bengal Tenancy Act, 1885.

60. For Chapter XIIIA. of the Bengal Tenancy Act,* 1885, the following shall be substituted, namely :—

"CHAPTER XIIIA.

"SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.

Recovery of arrears of rent under the certificate procedure in certain areas.

"158A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained,

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bengal Public Demands Recovery Act, 1913, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area:

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary

* Act VIII, of 1885.

any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed,

to such Revenue-officer as the Local Government may, appoint, for the purpose of this section, to perform the functions of a Certificate-officer under the Bengal Public Demands Recovery Act, 1913,

for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II. to the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act,* 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, th said Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due ; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office:

Provided that—

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in

* Act VII. of 1870.

respect of the period during which it is alleged in the requisition made under sub-section (*3*) that the arrears of rent sought to be recovered have accrued; and

(*b*) if, after the signing of a certificate, it is found that such a suit was instituted in a Civil Court before the certificate was signed, such certificate shall be cancelled.

(*6*) The person in whose favour any certificate is signed under sub-section (*5*) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and responsibility, and not otherwise.

(*7*) The Bengal Public Demands Recovery Act, 1913, with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (*5*).

(*8*) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (*3*);

and, subject to the provisions of section 34 of the Bengal Public Demands Recovery Act, 1913, no tenant shall, after the signing of any certificate against him under sub-section (*5*) of this section, institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately; and, where a Revenue-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate."

Amendment of section 158B (1) of the Bengal Tenancy Act, 1885.

61. For sub-section (1) of clause 158B of the Bengal Tenancy Act,* 1885, the following shall be substituted, namely:—

Passing of tenure or holding sold in execution of decree or certificate.

"(1) Where a tenure or holding is sold in execution of—

(a) a decree for arrears of rent due in respect thereof, or

(b) a decree for damages under section 186A, or

(c) a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913,

the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser,

if such decree was obtained by—

(i) a sole landlord, or

(ii) the entire body of landlords, or

(iii) one or more co-sharer landlords who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords."

* Act VIII of 1885.

Amendment of section 167 of the Bengal Tenancy Act, 1885.

62. (1) In sub-section (1) of section 167 of the Bengal Tenancy Act,* 1885, after the words "the foregoing sections" the words "or under the Bengal Public Demands Recovery Act, 1913," shall be inserted.

(2) In sub-section (4) of the said section,—

(a) after the words "a decree" the words "or a certificate signed under the Bengal Public Demands Recovery Act, 1913," shall be inserted, and

(b) after the words "this Chapter" the words "or that Act" shall be inserted.

Amendment of section 171 (1) of the Bengal Tenancy Act, 1885.

63. In sub-section (1) of section 171 of the Bengal Tenancy Act * 1885, after the words "under this Chapter" the following shall be inserted, namely:—

"or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913."

Amendment of section 172 of the Bengal Tenancy Act, 1885.

64. In section 172 of the Bengal Tenancy Act,* 1885, for the words "When a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted, namely:—

"When a tenure or holding is advertised for sale—

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913 for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting."

* Act VIII. of 1885.

II. THE ORISSA TENANCY ACT II. OF 1913, by s. 2 repealed the whole of the Bengal Tenancy Act VIII. of 1885, so far as it extended to the Districts of Cuttack, Puri and Balasore, in the Orissa Division.—Vide Bihar and Orissa Act No. II. of 1913, s. 2.

III. The Bihar and Orissa Public Demands Recovery Act, 1914.

SCHEDULE III.

PART I.

AMENDMENTS OF THE BENGAL TENANCY ACT, 1885.

1. For Chapter XIIIA. of the Bengal Tenancy Act, 1885, the following shall be substituted, namely :—

"CHAPTER XIIIA."

"SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.

Recovery of arrears of rent under the certificate procedure in certain areas.

158A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained,

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance

of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate-officer under the Bihar and Orissa Public Demands Recovery Act, 1914,

for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner prescribed by rule I. in Schedule II. to the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, the said Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due ; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

Provided that—

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3)

that the arrears of rent sought to be recovered have accrued; and

(*b*) if, after the signing of a certificate, it is found that such a suit was instituted in a Civil Court before the certificate was signed, such certificate shall be cancelled.

(*6*) The person in whose favour any certificate is signed under sub-section (*5*) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and responsibility and not otherwise.

(*7*) The Bihar and Orissa Public Demands Recovery Act, 1914, with such restrictions and modifications (if any) as may be prescribed shall apply to the execution and to all proceedings arising out of the execution, of certificates filed under sub-section (*5*).

(*8*) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (*3*);

and subject to the provisions of section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914, no tenant shall after the signing of any certificate against him under sub-section (*5*) of this section institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(*9*) The word 'landlord' in this section includes an entire body of landlords, and also one or more co-sharer landlords

who collects or collect his or their share or shares of the rent separately; and, where a Revenue-Officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate."

II. For sub-section (*1*) of section 158B of the Bengal Tenancy Act, 1885, the following shall be substituted, namely:—

"(1.) Where a tenure or holding is sold in execution of—

(*a*) a decree for arrears of rent due in respect thereof; or

(*b*) a decree for damages under section 186A; or

(*c*) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914,

the tenure or holding shall, subject to the provisions of section 28, pass to the purchaser,

if such decree was obtained by—

(*i*) a sole landlord; or

(*ii*) the entire body of landlords; or

(*iii*) one or more co-sharer landlords who has or have sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of or in favour of, a sole landlord or the entire body of landlords."

III. (*1*) in sub-section (*1*) of section 167 of the Bengal Tenancy Act, 1885, after the words "the foregoing sections" the words "or under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted.

(2) In sub-section (4) of the said section—

(a) after the words "a decree" the words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914," shall be inserted, and

(b) after the words "this Chapter" the words "or that Act" shall be inserted.

IV. In sub-section (1) of section 171 of the Bengal Tenancy Act, 1885, after the words "under this Chapter" the following shall be inserted, namely :—

"or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914"

V. In section 172 of the Bengal Tenancy Act, 1885, for the words "When a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted, namely :—

"When a tenure or holding is advertised for sale—

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting."

II.—Rulings under the Bengal Tenancy Act up to January, 1916.

Section 1.

THE Bengal Tenancy Act, as framed in 1885, provided in section 1 that its provisions were not to extend to any land within the Town of Calcutta. At that time the Municipal limits of Calcutta were identical with the limits of the Town of Calcutta as defined by the notification of the Governor-General in Council, dated the 10th September 1793. There was consequently, no room for contention at that time that the operation of the Bengal Tenancy Act was not excluded in the case of land in the suburbs of the "Town of Calcutta." The "Town of Calcutta" mentioned in section 1 was not equivalent to "Calcutta" as defined for the purposes of the Calcutta Municipal Act, 1888, and that, notwithstanding the extension of the limits of Calcutta for Municipal purposes, the Bengal Tenancy Act was applicable to lands situated outside the limits of the "Town of Calcutta," though included for Municipal purposes, within the limits of Calcutta.—*Jotiram* v. *Janaki*, 20 C. W. N. 259.

Section 2.

The provisions of section 2, sub-section (*2*) of the Bengal Tenancy Act were introduced by way of excessive caution even if such a provision had not been incorporated in the Bengal Tenancy Act, the effect would have been that, as soon as any portion of the Bengal Tenancy Act was extended to any locality, it would by implication repeal the inconsistent provisions of the pre-existing statutes in force there.—*Bikal Parida* v. *Jogendra*, 14 C. L. J. 168=11 Ind. Cas. 239.

Section 3.

Section 3 (*9*).—Where there are several tenants in a holding and each of them holds a separate portion of the holding, each of

these portions should not be treated as a separate holding.—*Purna* v. *Bijoy*, 1 Ind. Cas. 109.

Nimhowla tenures of Backerganj are permanent tenures within the meaning of section 3, clause (*8*) of the Bengal Tenancy Act, and are capable of bequest and transfer like other immoveable property under section 11 of the Act.—*Promoda* v. *Abijan*, 25 Ind. Cas. 373.

Section 4.

Where a *kabuliat* provided that the rent was to be paid putra pautra dikrama (down to son's, son's son and so on), that the tenant would pay additional rent for any excess area found to exist and would get a reduction of rent in respect of any defect of area, that the tenant would not excavate any tank or construct any buildings in the land, and that the tenant would not alienate the land and jama by gift or sale or by granting temporary or perpetual settlement: *Held* that the tenant was not a *raiyat* at a fixed rent or rate of rent, and that he had no right to transfer the holding: *Held*, further, that although there is no express condition against the tenant mortgaging, yet a mortgage, leading to a sale of the holding owing to the default of the mortgagor, comes within the prohibition of the lease.—*Narendra* v. *Banku*, 8 Ind. Cas. 825.

Section 5.

The presumption mentioned in section 5 sub-section 5, applies even to the case of a tenancy created before the Act came into force.—*Khatajan* v. *Aswini*, 2 Ind. Cas. 72.

When the presumption raised by section 5 (*5*) of the Bengal Tenancy Act was met by a finding rebutting such presumption, the High Court was right in holding that the tenant was a *raiyat* and not a tenure-holder, although the area exceeded 100 bighas.—*Damodar* v. *Dalgliesh*, 15 C. W. N. 345=13 C. L. J. 512=38 C. 432=9 Ind. Cas. 913 (P.C.).

Where no question as to entry of a rent settled, or an omission to settle rent is concerned, a suit by a tenant for a declaration that an entry in the record-of-rights describing him as a tenure-holder is erroneous and for a declaration that he is an occupancy *raiyat* is not a suit under sec. 104 H; but falls within the category of suits alluded to in the proviso to section 111A of the Bengal Tenancy Act, and may be brought within six years. *Held*, that the tenant, who was admittedly in occupation of 1815 bigas of land, had succeeded in rebutting the presumption under section 5 (*5*) of the Bengal Tenancy Act and established that he was an occupancy *raiyat*.

Per N. CHATTERJEE.—It is only in cases where the terms of the lease creating the tenancy are ambiguous or in cases where there is no written lease, and it is not clear what the original purpose of the tenancy was, that the Court should look into the subsequent conduct of the parties and surrounding circumstances to determine the nature of the tenancy. Once, however, the original grant is clearly shown to be a *raiyati* by a lease unambiguous in its terms, or by other evidence where there is no written lease, the mere fact that the tenants subsequently sublet the land would not alter the character of the tenancy. There is nothing to prevent the landlord and tenant, notwithstanding the existence of unambiguous lease, to alter the original nature of the tenancy by agreement, and there may possibly be cases where subsequent conduct may be set up as evidence of such agreement. But where no such agreement is set up and it is clearly proved that the land was originally acquired by the tenant for cultivating it himself or by hired servants or by members of his family, the character of the tenancy is not affected by the mere fact that the land was subsequently let out to tenants.—*Raja Promoda Nath* v. *Asiruddin*, 15 C. W. N. 896.

Clause (*5*) of section 5 of the Bengal Tenancy Act does not embody a presumption that, where the area *held* by a tenant is less than 100 bighas, the tenant is to be presumed to be a *raiyat*

until the contrary is shown.—*Tara Nath* v. *Ishwar Chandar*, 14 C. L. J. 598=11 Ind. Cas. 164.

A person who obtains a settlement of agricultural land from the holder of undivided share in a *zemindary* without the assent of the other joint holders, is not a *raiyat* within the meaning of the Bengal Tenancy Act.—*Kader* v *Ram*, 19 Ind. Cas 395.

Horticultural means the cultivation of a garden or the science of cultivating, or managing garden, including growing flowers, friuts and vegetables. If a lease was for the purpose of gathering fruits from the trees on the land, the lease was not for horticultural purpose.—*Hedayet* v *Kalanand*, 17 C. L. J. 411= 20 Ind. Cas. 332.

The defendant *held* lands of over 100 bighas under a lease from the plaintiff which provided that the grantee might cultivate the land after making them fit for cultivation at his own expense either by himself or by having it cultivated by others, or by making or adopting such other arrangements for the purpose; *Held* that the statutory presumption under section 5 (*5*) of Bengal Tenancy Act was not negatived by the lease, that the grantee was a tenure-holder within section 5 Clause 1 of the Act although part of the land is cultivated by himself—*Bibhudendra* v. *Debendra*, 20 C. L. J. 140.

Where it was obligatory under section 5 (*5*) of the Bengal Tenancy Act to presume that the grantee was a tenure-holder.—*Bibhudendra* v. *Debendra*, 27 Ind. Cas. 432=20 C. L. J. 140.

Section 11.

A lease for agricultural purposes under which a person acquired the status of a *ryot* under the Bengal Tenancy Act and which provided that the rent fixed was not liable to enhancement and that the grantee was to have enjoyment from generation to generation makes the grantee a *ryot* at a fixed rate of rent. The lessee is a permanent tenure-holder and is not disabled from granting a sub-lease of the holding. The sub-lease is therefore

a transfer within sections 11 and 18 of the Bengal Tenancy Act of the holding. A sub-lessee is entitled to deposit money under section 170 to avoid sale of holding.—*Hari Mohan* v. *Atal*, 23 Ind. Cas. 925.

Nimhowla tenures of Backerganj are permanent tenures within the meaning of section 3, clause 8, of the Bengal Tenancy Act, and as such capable of transfer and bequest like other immoveable property under section 11 of the Act.—*Ranjan* v. *Abijan*, 25 Ind. Cas. 373.

Section 12.

The landlord is not bound to recognize any sub-division of the holding, unless the provisions of sections 12 and 17 of the Act have been strictly complied with, or to sue to recover rent of the holding from any body except the persons whom the landlord has recognized as the tenants.—*Rammoy* v. *Rupai*, 13 C. L. J. 267=9 Ind. Cas. 801.

Section 12 of the Bengal Tenancy Act, the operation of which is confined to transfers by sale, gift or mortgage, does not apply to a transfer on partition which implies a grant or exchange; and which may, therefore, be effected without the necessity of the registration and notice required by that section. —*Ramdhan* v. *Sharup*, 18 Ind. Cas. 479.

The Bengal Tenancy Act does not apply to the alienation of a part of a *patni taluk*, and, such an alienation though registered does not confer any interest on the transferee by virtue of sections 12 and 17 of the Bengal Tenancy Act, unless it is registered with the *zemindar* according to the provisions of the Patni Regulation.—*Azimoddin* v. *Mathura*, 18 Ind. Cas. 712.

On a true construction of sections 5 and 6 of Regulation VIII. of 1819 (Bengal), a partial transfer of a *patni taluq* is not permitted as against the zemindar without his special sanction and a partial transferee cannot claim to be recognized as transferee by virtue of sections 12 and 17 of the Bengal Tenancy Act as sec-

tion 195 of the Tenancy Act saves all enactments relating to *Patni* tenures from the operation of the Act.—*Rakhal* v. *Umapado*, 18 C. W. N. 629=22 Ind. Cas. 788.

The transferor of a permanent tenure under section 12 of the Bengal Tenancy Act is complete as soon as the document is registered, and a valid transfer under that section operates to discharge the transferor from the liability to pay rent which thereupon passes to the transferee.—*Rup Chand* v. *Norendra*, 19 C. W. N. 112.

The transfer of permanent tenure under section 12 of the Bengal Act is complete as soon as the document is registered, in other words, a valid transfer under section 12 of the Bengal Tenancy Act operates to discharge the transferor from the liability to pay rent, which thereupon passes to the transferee.—*Rup Chand* v. *Narendra*, 28 Ind. Cas. 683=19 C. W. N. 332.

Section 13.

Section 13 of the Bengal Tenancy Act applies to transfers of all permanent tenures, and it is immaterial, whether the name of the tenant at the time of the sale has or has not been previously recorded in the books of the landlord.—*Girish Chandra* v. *Khagendra*, 16 C. W. N. 64=13 C. L. J. 613=9 Ind. Cas. 1001.

The unrecorded transferee of a trasferable tenure is in no sense a trespasser but is a tenant, though his name is not on the books of the landlord, who is entitled to recognition at the hands of the landlord.—*Ibid.*

Section 15.

Sections 15 and 16 of the Bengal Tenancy Act do not refer to the case of representation but to the case of beneficial succession.—*Bipro Das* v. *Pachi*, 5 Ind. Cas. 434.

It is a sufficient compliance with the provisions of sections 15 and 16 of the Bengal Tenancy Act, if the landlord's fees, etc.,

be deposited with the Collector after the institution of rent suit. —*Rajani* v. *Makhan*, 15 Ind. Cas. 542.

The object of sections 15 and 16 of the Bengal Tenancy Act, is to give information to the superior landlord or tenure-holder of a change in his tenants or subordinate tenure-holder.—*Mofizuddin* v. *Lakhan*, 18 Ind. Cas. 254.

Section 16.

A Receiver appointed in a partition suit is not a person who has become entitled to a permanent tenure by succession within the meaning of the section 16 of the Bengal Tenancy Act, and the terms of that section do not bar a suit for rent by the Receiver.—*Harendra* v. *Abinash*, 7 Ind. Cas. 761.

Section 17.

A sub-division of the holding or distribution of the rent cannot, having regard to the terms of sections 17 and 88 of the Bengal Tenancy Act, be binding on the landlord, unless his consent in writing has been obtained to the sub-division, and the landlord cannot be held to be bound, by reason of the provisions of the Act, to make the purchaser of a portion of the holding or tenure, a joint defendant with the defendants who are the only persons recorded as tenants in the landlord's *Sherista*.—*Rammoyi* v. *Rupai*, 13 C. L. J. 267=9 Ind. Cas. 801.

Section 18.

A *raiyat* at fixed rates under section 18 of the Bengal Tenancy Act is entitled to sell shares or specific portions of his holding; if he sells portions of his holding to several purchasers, such purchasers are not reduced to the position of ordinary occupancy-*raiyats*. A landlord in suing for rent is bound, if he is aware of the purchases, to implead the purchasers as parties to the suit.—*Akhoy Mitter* v. *Sri Narain*, 9 Ind. Cas. 663.

Section 19.

The rights acquired before the passing of the Bengal Tenancy Act of 1885 are saved by the special provisions of section

19 of the Act of 1885.—*Ichhyamoyi* v. *Kailash*, 18 C. W. N. 358.

Section 20.

The presumption mentioned in section 20, sub-section (*7*) of the Bengal Tenancy Act applies only to proceedings under the Act, and cannot be applied in a suit for rent which is not a proceeding under the Act.—*Mulluk* v. *Satish*, 3 Ind. Cas. 306.

The presumption mentioned in clause (*7*) of section 20 of the Bengal Tenancy Act, arises only in proceedings under the Act, but as a suit for rent is not a proceeding under the Act, the presumption does not arise in such a suit.—*Jahandar* v. *Ram Lal*, 5 Ind. Cas. 565.

Sections 20 and 21 of the Bengal Tenancy Act are inconsistent with section 6 of Act X. of 1859 to this extent that where sections 20 and 21 allow of the growth of the right of occupancy in all lands, section 6 restricts the growth of occupancy to lands other than *nij jote* lands.—*Rafiuddin* v. *Iswar*, 17 C. L. J. 585 =20 Ind. Cas. 394.

Where the possession of a land for eleven years prior to the date of enhancement of rent is proved, there is a presumption of possession for 12 years under sub-section (*7*) of section 20 of the Bengal Tenancy Act.—*Tasul* v *Abul*, 28 Ind. Cas. 380.

Where the plaintiff was allowed to hold over after the expiry of the original term of the lease and occupies the agricultural land for a period of nine years in a district to which sections 20 and 21 of the Bengal Tenancy Act were, before the grant of the lease, extended: *Held* (*1*) that the plaintiff acquired the status of a non-occupancy *raiyat*, and that this status could not be retrospectively affected by the subsequent extension to the district of section 116 of the Bengal Tenancy Act.—*Sitanath* v. *Hora Narain*, 30 Ind. Cas. 58=21 C. L. J. 644.

Section 21.

The land in dispute was let to the defendant in 1896 for three years. Upon the expiry of that term, he was allowed to

hold over and in October, 1905, the plaintiff—landlord served him with notice to quit the land on April 14th, 1906. A suit for ejectment was filed on December 4th, 1906. *Held*, that as the notice was served within six months before the expiration of the term, nor the suit instituted within six months after the expiration of the term, the suit was barred under sections 44 and 45 of the Bengal Tenancy Act.—*Harihar* v. *Dinu*, 10 Ind. Cas. 139=14 C. L. J. 170.

A tenant, who is not a *raiyat* in respect of a piece of *bastu* or homestead land but is so in respect of the agricultural land which he holds in the village, and the homestead land otherwise than as part of the tenant's holding as a *raiyat*, must be regarded, in the absence of any allegation of local custom or usage, as holding the homestead land in accordance with the provisions of the Bengal Tenancy Act applicable to land held by *raiyat*; such a tenant has, under section 21 of the Act. a right of occupancy in the piece of homestead or *bastu* land as well as in the agricultural land in the village of which he is a settled *raiyat*.—*Golam* v. *Abdool*, 13 C. L. J. 255=9 Ind. Cas. 922.

Section 22.

The words "by transfer, succession or otherwise," in section 22 of the Bengal Tenancy Act, do not embrace the case of vesting by death of an occupancy *raiyat* without heirs under section 26 of the Act.—*Muktakeshi* v. *Pulin*, 13 C. W. N. 12.

Where the *raiyat* transfers his interest to the landlord, occupancy-right and not the entire interest of the *raiyat* ceases to exist under section 22(*1*) of the Bengal Tenancy Act, so that there is no extinguishment of the holding.—*Lal Mahomed* v. *Jagir*, 2 Ind. Cas. 654.

Section 22 of the Act applies only to occupancy-holdings which are transferable.—*Radhanath* v. *Aditya*, 5 Ind. Cas. 264.

Section 22, sub-section (*3*) of the Bengal Tenancy Act, prevents the *ijaradar* from acquiring a right of occupancy in any

land comprised in the *ijara* by any means whatever, for instance, by purchase or otherwise.—*Raghubar* v. *H. Manners*, 13 C. L. J. 568=11 Ind. Cas. 389.

A co-sharer landlord, making a purchase of a holding with a right of occupancy, would be entitled to hold the land in opposition to any other co-sharer under section 22 of the Bengal Tenancy Act, only when the occupancy right was transferable by custom ; that section, before its amendment in 1908, had not the effect of making transferable occupancy rights which were not transferable by custom ; and, therefore, a non-transferable occupancy holding could not be sold to a co-sharer landlord so as to give the transferee a right to retain possession of it.—*Bijoy Singh* v. *Sashimukhi*, 12 Ind. Cas. 67.

Section 22 clause (*2*) of the Bengal Tenancy Act does not apply to a non-transferable occupancy *jote*.—*Lakhi* v. *Balabhadra*, 13 Ind. Cas. 336.

When an *ijaradar* purchases an occupancy-holding, the occupancy-right comes to an end, but the holding itself does not cease to exist. Therefore, the purchaser of a holding from an *ijaradar*, becomes a *raiyat*.—*Mehdi* v. *Grant*, 13 Ind. Cas 636.

The Eastern Bengal and Assam Act I. of 1908, section 10, clause (*b*), which amends section 22, clause (*2*) of the Bengal Tenancy Act, has no retrospective operation.—*Nabin* v. *Banga*, 15 Ind. Cas. 705.

The case of *Girish Chandra* v. *Kedar Chandra*, 27 C. 473, which lays down that, in the case of a non-transferable occupancy-holding, the holding itself, as apart from the right of occupancy, cannot be sold so as to give the transferee a right to retain possession of it, has not been overruled by any subsequent decision of a Full Bench.—*Salima* v. *Enatulla*, 15 Ind. Cas. 524.

A person held a certain piece of land as a *raiyat* under the custom of *utbandi* from 1884 to 1889. From 1890 to 1898 he

was the *ijardar* of a considerable area which included the piece of land held by him as *raiyat*. During the *ijara* he continued to cultivate the land as before. After the *ijara* he held and cultivated the land till 1908. *Held*, that there had been occupation as *raiyat* of the same land for 12 years continuously within the meaning of section 180 of the Bengal Tenancy Act and that a right of occupancy had been acquired in the land; and that during the term of the *ijara* the active operation of the possession as a means of acquiring the right of occupancy was suspended and remained in abeyance under section 22, clause (*3*) of the Act.—*Jasimuddin* v. *Beni*, 19 Ind. Cas. 636.

When an occupancy-*raiyat* purchases the superior tenure, the occupancy-right ceases to exist but not the holding itself.—*Akhil* v. *Hasan*, 18 C. L. J. 262=20 Ind. Cas. 698.

A sub-tenant is not entitled to notice under section 167 of the Bengal Tenancy Act nor is he entitled to notice under section 85, if he be treated as an under-*raiyat*, as he did not hold under a registered lease. The purchaser of the right of a superior *talukdar* does not step into the shoes of the occupancy *raiyat* nor is there a merger within section 22.—*Sarada* v. *Chaitanya*, 25 Ind. Cas. 741.

Sub-section (*2*), section 22 applies to the case of a purchaser of a transferable holding.—*Lakhi* v. *Balabhadra*, 19 C. L. J. 400 =25 Ind. Cas. 546.

The purchaser of the right of a superior *Talookdar* does not step into the shoes of the occupancy *raiyat*, nor is there a merger under section 22 of the Bengal Tenancy Act.—*Sarada* v. *Chaitanya*, 25 Ind. Cas. 741.

Though the *raiyati* right merges into that of the superior landlord by the sale of the holding for arrears of rent and its purchase by the landlord, the right of an under-*raiyat* does not cease but remains alive till he is evicted by law, according to the proviso of section 22 of the Bengal Tenancy Act.—*Anant* v. *H. Manners*, 29 Ind. Cas. 459.

Section 23.

Property in trees growing in land is by general law vested in the proprietor of the land subject to any custom to the contrary. This refers to the removal of trees after they have been felled.—*Mahamed* v. *Ali Fakir*, 10 C. L. J. 25.

Section 25.

The plaintiffs instituted a suit for ejectment against certain occupancy-*raiyats* under clause (*a*) of section 25 of the Bengal Tenancy Act. A suit for rent was subsequently commenced in respect of a period subsequent to the alleged forfeiture. *Held*, that there was no waiver at the date of the commencement of the suit, and the claim for ejectment could not be defeated on that ground.

Before a landlord can succeed in an action under section 25, clause (*a*) of the Bengal Tenancy Act, it is obligatory upon him to prove that the land has been used in a manner which renders unfit for the purposes of the tenancy; what has to be considered is the effect of the act upon the entire land comprised in the tenancy.—*Sourindra* v. *Rahini Bux*, 15 Ind. Cas 497.

Where a tenant unauthorisedly mortgages the holding and puts the mortgagee in possession, that by itself cannot work a forfeiture under the Bengal Tenancy Act.—*Bhupendra* v. *Bansi*, 22 Ind. Cas. 416.

Denial of landlords' title when operates as a forfeiture.—See 26 Ind. Cas. 619.

Section 26.

Section 26 of the Bengal Tenancy Act deals with the right of occupancy and not of a holding, and will not apply to the ordinary holding of a *raiyat* which is not a creature of the statute.—*Midnapore Zemindary* v. *Hrishikesh*, 18 C. W. N. 828=19 C. L. J. 505=25 Ind. Cas. 562.

Except under a local usage a *raiyat* is not competent to make a testamentary disposition of a non-transferable occupancy-holding.—*Amulya* v. *Tarini*, 18 C. W. N. 1290.

In the absence of proof of any local usage to the contrary a *raiyat* is not competent to make a testamentary disposition of his right of occupancy.—*Amulya* v. *Tarini*, 27 Ind. Cas 235 =18 C. W. N. 1290=21 C. L. J. 187.

An occupany-*raiyat* has no power to bequeath by will his holding unless a special custom to do so is proved.—*Kunja* v. *Umesh*, 27 Ind. Cas. 352=18 C. W. N. 1294.

Section 29.

A lease created in contravention of the provisions of section 29 of the Bengal Tenancy Act is void, not voidable.—*Manindra* v. *Upendra*, 36 C. 604.

Where the enhancement is admittedly more than 2 annas in the rupee in that case it is in contravention of clause (*c*) of section 29.—*Jotindra* v. *Moharshey*, 3 Ind. Cas. 430; see also (*Rama* v. *Kamala*) 3 Ind. Cas. 223.

The provisions of section 29 of the Bengal Tenancy Act govern the relations between co-sharer landlords and their tenants just as much as they govern the relations between sole landlords and their tenants.—*Ramchandra* v. *Ekadashi*, 10 C. L. J. 87;

Proviso (*1*) to section 29 of the Bengal Tenancy Act controls merely clause (*a*) and not clause (*b*) of the section.—*Mulluk* v. *Satish*, 3 Ind. Cas. 306.

The provisions of section 29 of the Bengal Tenancy Act control section 30 and 31.—*Nobin* v. *Kula*, 3 Ind. Cas. 402.

Where there is *bonâ-fide* dispute between the Landlord and his tenant as to the amount of rent or as to the area of the holding and a *kabuliyat* is executed by the tenant in settlement of the dispute, the *kabuliyat* is not affected by the provisions of section 29 of the Bengal Tenancy Act.—*Kedar Nath* v. *Manindra*, 11 C. L. J. 106.

Where in a rent suit, the case made by the defendant in the first Court was that the *kabuliyat* set up by the plaintiff

was not executed by the defendant, and section 29 of the Bengal Tenancy Act was never made a topic of discussion: *Held*, that the lower Appellate Court ought not to allow the defendant to change the case and plead that the *kabuliyat* was not enforceable in law being in contravention of section 29.—*Kunji Singh* v. *Raj Kumar*, 11 Ind. Cas. 940.

An agreement to pay a certain amount of rent entered into by a *raiyat* for settlement of a dispute as to the nature of the existing rent with a view to avoid further litigation, is not an agreement to enhance the rent within clause (*b*) of section 29 of the Bengal Tenancy Act.—*Ram Pratab* v. *Gokul*, 12 Ind. Cas. 589.

Section 29 of the Bengal Tenancy Act does not apply where the land not being transferable the defendant is not an occupancy-*raiyat*.—*Sarat* v. *Sham Chand*, 14 Ind. Cas. 701.

In a *kabuliyat*, it was stated that the rent of the holding was Rs. 23 odd, that Rs. 14 odd was to be kept in abeyance and that for three years, the tenant would be liable to pay Rs. 8 odd. At the end of that time, he was to take a fresh settlement and execute a fresh *kabuliyat* and if he did not do so, he was to be liable for rent at the rate of Rs. 23 odd. After the expiry of the period, no fresh settlement having been taken by the tenant, the landlord sued for rent at the higher amount.—*Khitish* v. *Gerpa*, 15 Ind. Cas. 878.

Under section 147A of the Bengal Tenancy Act, a Court is not competent to deliver a decree within the meaning of section 44 of the Evidence Act, in a suit for rent, upon a compromise which was not a lawful contract being in contravention of section 29 of the Bengal Tenancy Act.—*Surjug* v. *Dukhit*, 18 Ind. Cas. 809.

The provision of the clause (*b*) of section 29 does not apply only to contracts executed at the time of the enhancement. The words are sufficiently wide to include contracts

executed some years before.—*Mahamaya* v. *Kishore*, 18 C L. J. 502=21 Ind. Cas. 948.

Enhancement of rent under the Bengal Tenancy Act means the increase of rent in amount without alteration in kind. Therefore, the conversion of cash rent into rent in kind cannot be regarded as an enhancement within the meaning of section 29 or section 43.—*Gobind* v *Banarasi*, 21 Ind. Cas. 351=18 C. L. J. 74.

An agreement embodied in a *kabuliyat* to pay a certain amount of rent agreed upon by the parties in settlement of a *bonâ-fide* dispute regarding the rate of rent and to avoid further litigation is not an agreement in violation of section 29 of the Bengal Tenancy Act. Section 29 applies only to cases where there is a contract pure and simple for enhancement, which cannot be the case where there is a *bonâ-fide* dispute as to rate or area.—*Bata* v *Manindra*, 25 Ind. Cas. 829.

The defendant held under the plaintiff and his co-sharers two separate tenancies. In 1866 the holdings were amalgamated and the rent was fixed at Rs 80 In a partition amongst the superior landlords, the disputed land fell to the share of the plaintiff and by agreement of parties, Rs. 16-4 was fixed as the fair rent payable in respect thereof. The defendant contended that as before 1866 Rs. 7 was payable as annual rent in respect of that land, there was an enhancement in contravention of section 29 of the Bengal Tenancy Act. *Held* that there was no enhancement at all.—*Rowshan Sircar* v. *Shyama Charan*, 20 C. L. J. 331.

The prohibition in section 29 to enhancement of rent applies only to rents paid in money and not where the rent is received in kind.—*Fazal* v. *Sukor*, 19 C. L. J. 333=25 Ind. Cas. 442.

Defendants originally held a *jama* of Rs. 24 which did not include the lands now in dispute. The *jama* was increased

to Rs. 29-8-0 at the settlement in 1897. Subsequently, when defendants were found to be in possession of the disputed lands they agreed to pay Rs. 38-8-0 provided the lands were included in the settlement. Defendant executed a *kabuliyat* of all the lands and plaintiffs agreed to grant a *pattah* for the lands But, as a matter of fact, the *pattah* granted did not include the lands. In a suit to recover possession or in the alternative, the enhanced rent: *Held* (*a*) that the agreement was invalid under sections 29 and 113, Bengal Tenancy Act, as there was no improvement by the landlord or subsequent alteration in the holding.—*Birendra* v. *Jina*, 23 Ind. Cas. 579.

Where it appeared that in consideration of the landlord recognising a division of the holding and his foregoing the *Nazar-nama* for additional lands included in the divided holding, a tenant agreed to pay an enhanced rent, the enhancement being more than 2 as. in the rupee. *Held*, following 13 C. W. N. 181, the onus of proving that a *kabuliyat* contravenes section 29 clause (*b*) of the Bengal Tenancy Act lies on the tenant, that under the circumstances of the case section 29, had no application.—*Taramani* v. *Safatulla*, 22 Ind. Cas. 854.

Where the *kabuliat* stipulated for the payment of one cartload of *bhusa* over and above certain *nakdi* rent, and the plaintiff in his plaint did not treat the husks as a part of the rent, nor were cesses claimed or paid on the basis of the husks being a part of the rent. *Held*, that the claim as to husks came within the statutory prohibition against *abwabs* and other illegal cesses and could not be recovered.—*Kalor* v. *Mathora*, 19 C. L. J. 402-25 Ind. Cas. 547.

If the total rent remains unaltered, its distribution, by agreement of parties, over different parcels of land does not constitute enhancement within the meaning of the Bengal Tenancy Act —*Rawshan* v. *Shyama*, 27 Ind. Cas. 49.

Where rent is assessed for excess land in possession of a tenant as also for new lands taken by him, and one consolidated

rent is assessed for all the lands in his possession, there is in essence a new holding created and no question arises as to the enhancement of rent payable by the tenant and section 29 of the Bengal Tenancy Act has no application to such a case.—*Raj Kumar* v. *Faizuddi*, 30 Ind. Cas. 283=22 C. L. J. 81.

Section 29 of the Bengal Tenancy Act is applicable where the holding remains constant but where the original holding is split up into a number of new tenancies, no question can arise as to the effect of the section.—*Nazir* v *Jatindra*, 30 Ind. Cas. 320=22 C. L. J. 88.

A claim for recovery of arrears of rent was based on a *kabuliyat*. The *kabuliyat* recited that the tenants held an ancestral *jama* of ten *bighas* at an annual rent of Rs. 6-15 under the plaintiff, his co-sharers and a lady named Jadumonee Dasi. The tenants agreed by the *kabuliyat* that from the date thereof they would hold the land in the share of the plaintiff and his co-sharers at the rate of Rs. 18-6 0. The co-sharers were joined as defendants, and they did not object to the plaintiffs' claim of his share only. Jadumonee was not made a party. *Held* that the agreement to pay enhanced rent was in contravention of section 29 of the Bengal Tenancy Act, and consequently unenforceable.—*Raj Kumar* v. *Faizuddi*, 30 Ind. Cas. 892=22 C. L. J. 86.

Section 30.

An undivided share of a *howla* does not come within the definition of holding nor does it fall within section 30 of the Bengal Tenancy Act. The landlord of such a share is not entitled to maintain a suit for enhancement.—*Parbatty* v. *Mathura*, 15 Ind Cas. 453=16 C. W. N. 877=16 C. L. J. 9.

The purchaser of one of two separated shares of a tenure is not entitled to bring a suit for enhancement of his share of rent against a *raiyat* who holds under the owners of the two separated shares, without joining the owner of the other separated share as a plaintiff. A purchaser is not the landlord

of a holding within the meaning of section 30, and the owners of the separated shares of the tenure are still joint landlords within the meaning of section 1.—*Hemanta* v. *Kulsamannessa*, 15 Ind. Cas. 847.

Whether a purchaser at a Revenue Sale can sue, according to the provisions of the Bengal Tenancy Act, to enhance the rents of occupancy *raiyats* not holding at fixed rents or fixed rates of rent.—*Abdul* v. *Makbul*, 20 C. W. N. 185.

Section 31.

Where the provisions of section 31 (*a*) of the Bengal Tenancy Act are not extended, the principles of the prevailing rate cannot be applied.—*Ram Deo Singh* v. *Moheswar*, 21 C. L. J. 483.

Section 31A.

In a suit for enhancement of rent, if it is found that the majority of the tenants holding similar lands do not pay one uniform rate, the lowest rate may be adopted as the prevailing rate, and the rent may be enhanced up to that limit.—*Lalit* v. *Babu Hit Narain*, 9 Ind. Cas. 5.

Section 32.

The two decimal periods, mentioned in section 32, clause (*a*) of the Bengal Tenancy Act, ought to be entirely distinct and should not even partially overlap each other.—*Annoda* v. *Niborani*, 11 C. L. J. 380.

Section 38.

A more liberal interpretation must be put on the word "permanent" in section 38 of the Bengal Tenancy Act and it must be construed with reference to existing conditions —*Krishna* v. *Palakdhari*, 22 C. L. J. 42=29 Ind. Cas. 236.

Section 40.

A proceeding under section 40 of the Bengal Tenancy Act is founded on the assumption that the tenant whose rent is

sought to be commuted is an occupancy *raiyat*.—*Kali* v. *Ram Chandra*, 21 C. L J. 487=19 C W. N. 823=29 Ind. Cas. 896.

The exercise of jurisdiction by a Revenue Court pre-supposes that the *raiyat* is an occupancy *raiyat*, and the rent is payable in kind as indicated in section 40 of the Bengal Tenancy Act.—*Durga* v. *Sukumar*, 30 Ind. Cas. 412=19 C. W. N. 825=21 C. L. J. 590.

Section 43.

It is fairly clear that during the twelve years which must elapse before a right of occupancy is acquired, the tenant is liable to pay the rent agreed upon irrespective of the provisions of section 43.—*Jahandar* v. *Ram Lal*, 5 Ind. Cas. 565.

Section 44.

When an *ijaradar* having a limited interest brings a *raiyat* on the land, the status of such *raiyat* is defined and his rights are regulated by the Bengal Tenancy Act, and he becomes at least a non-occupancy *raiyat*, and can be ejected only if one or more of the grounds mentioned in section 44 of the Bengal Tenancy Act are made out.—*Atal* v. *Lakshmi*, 2 Ind. Cas. 417.

Section 45.

Section 45 of the Bengal Tenancy Act includes a tenant, without occupancy right, in possession of an undivided share of a holding.—*Banku* v. *Benode*, 3 Ind. Cas. 350.

A suit for the ejectment of a non-occupancy *raiyat*, without giving him notice to quit, brought before the repeal of section 45 of the Bengal Tenancy Act which required such notice, is bound to fail.—*Kumar Kalanand* v. *Dhekh Dhari*, 9 Ind. Cas. 805.

Section 48.

Where an under-*raiyat* agrees to pay to his landlord as rent a certain quantity of produce or in default a fixed amount in cash his rent is a money rent within the meaning of section 48 of the Bengal Tenancy Act.—*Ananda* v. *Maksom*, 10 C. L. J. 144.

Section 48 of the Bengal Tenancy Act does not expressly mention the land *held* by the under-*raiyat*, but the meaning plainly is that the landlord of the under-*raiyat* who holds under a money rent is not entitled to recover rent exceeding by more than a quarter the rent which he himself pays in respect of the land let out to the under-*raiyat*—*Nimchand* v. *Joychandra*, 16 C. W. N. 857=39 C. 839=15 Ind. Cas. 256.

An ordinary holding of an under-*raiyat* from year to year is not in itself heritable, and there is nothing in the Bengal Tenancy Act which makes it heritable. But a lease-hold property under the Bengal Tenancy Act or under any other Act, if it is for a term of years, is necessarily heritable, as the contract enables the lessee to remain in possession for the full term.—*Nirode* v. *Jagarali*, 20 C. L. J. 328.

Section 48 of the Bengal Tenancy Act applies only to cases in which the land held by the under-*raiyat* is co-extensive with the land held by his *raiyat* landlord and not where it is, as in the present case, a very small fraction of the holdings of his *raiyat* landlord.—*Akram* v. *Anwar*, 25 Ind. Cas. 677.

Section 49.

Under the Bengal Tenancy Act the denial of landlords' title does not create a forfeiture and that the under-*raiyat* cannot be evicted from his holding except after notice to quit as prescribed by section 49, clause (*b*) of the Bengal Tenancy Act. —*Bechu* v. *Solim*, 2 Ind. Cas. 417.

The procedure under section 49 of the Bengal Tenancy Act should be gone through in order to evict an under-tenant from year to year.—*Gopal* v. *Basir*, 7 Ind. Cas. 17.

The defendant, an *under-raigat* of the plaintiff, was in occupation of *bastu* land under a written lease granted by the plaintiff and purporting to be of a permanent character. The lease had been admitted to registration notwithstanding the provisions contained in clause (*2*) of section 85 of the

Bengal Tenancy Act. *Held*, that the lease would be void and the defendant liable to be ejected under clause (*e*) of section 49, after due notice to quit as an under-*raiyat* holding otherwise than under a written lease.—*Sadhu* v. *Sarbamangala*, 8 Ind. Cas. 65.

An under-*raiyat* holding under a *pattah* executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration comes within clause (*b*) of section 49 and notice must be given as provided thereunder.—*Raj Kumari Debi* v. *Barkatulla*, 14 C. L. J. 407. (F. B.)

If an *ijaradar* purchases an occupancy-holding he acquires it as a non-occupancy holding. If he settles a tenant, he must be taken to have settled in his character as purchaser and not in his character as *ijaradar*, and, therefore, the tenant will be an under-*raiyat*, and liable to be ejected after his tenancy has been terminated by a notice to quit under section 49 of the Bengal Tenancy Act.—*Sheonandan* v. *Deo Saran*, 13 Ind. Cas. 598.

Under section 49 of the Bengal Tenancy Act, an under-*raiyat* can be ejected on the ground of the expiration of the term of a written lease, or by notice to quit if he holds otherwise than under a written lease. But if he holds under a written lease for an indefinite time, his *raiyat*-lessor cannot eject him arbitrarily. He can only do so for non-payment of rent. He cannot eject the under-*raiyat* by giving him notice under section 49 (*b*).—*Shangser* v. *Hadamulla*. 18 Ind. Cas. 82.

An under-tenant who is not an occupancy-*raiyat* cannot be ejected by the landlord without the notice prescribed by section 49 (*b*) of the Bengal Tenancy Act.—*Rashiklal* v. *Krishna*, 17 C. W. N. 781=18 Ind. Cas. 249.

Where the defendants are in the position of tenants holding over for some five years after the expiry of the lease and not trespassers in that case they are entitled to a notice under

section 49 (*c*) of the Bengal Tenancy Act.—*Chaturbhuja* v. *Gopal*, 18 Ind. Cas. 448.

Where the defendants holds a piece of homestead land under the plaintiffs, and the land forms part of the plaintiffs' agricultural holding, the incidents of the defendants' tenancy are governed by the Bengal Tenancy Act, and a notice to quit, under the Bengal Tenancy Act, must be served in order to bring a suit for ejectment of the defendant.—*Sarbeswar* v. *Rai Charan*, 19 Ind. Cas. 78.

An occupancy-*raiyat* attempted to create a permanent lease-hold interest in favour of his under-*raiyat* by a registered document subsequently; the landlord of the *raiyat* in execution of a decree for rent purchased the *raiyati* holding and brought a suit for *khas* possession against the so called under-*raiyat*. *Held*, that the landlord is entitled to succeed even without annulling the incumbrance under section 167 or giving a notice under section 49 of the Bengal Tenancy Act, as the sub-letting by the *raigat* was invalid.—*Gangadhar* v. *Rajendra*, 17 C. W. N. 860=19 Ind. Cas. 652.

Section 49 of the Bengal Tenancy Act prescribes no form of notice, nor does it give any indication as to the length of notice, because the Act itself protects the under *raiyat* from ejectment until the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.—*Harifulla* v. *Benode*, 17 C. W. N. 932=19 Ind. Cas. 557.

Section 49 of the Bengal Tenancy Act does not apply to the case of an under-*raiyat* who has relinquished his holding.—*Amirunissa* v. *Jainat*, 20 C. L. J. 548.

Where an under-*raiyat* transfers his whole holding, the landlord of the holding can sue in ejectment without reference to section 49 of the Bengal Tenancy Act which in such a case has no application.—*Srimati* v. *Jainat*, 19 C. W. N. 43.

The right of a purchaser of the right of a superior *talukdar*, to eject an under-*raiyat* arises upon the termination of the interest of the occupancy *raiyat* and a notice under section 49 of the Act is unnecessary —*Sarada* v. *Chaitanya*, 25 Ind. Cas. 741.

A lease-hold property under the Bengal Tenancy Act or under any other Act if it is for a term of years is necessarily heritable, inasmuch as the contract enables the lessee to remain in possession for the full term. Where the tenant holding under a written lease for a fixed term of years died before the expiry of his term and his son held the lease and went on cultivating the lands even after the lease: *Held*, that the son was liable to be ejected without a notice to quit.—*Nirode* v *Jagorali*, 27 Ind. Cas. 45.

Where the transfer of the whole holding has been made, the landlord is ordinarily entitled to enter on the holding and a relinquishment of the whole holding without any proof of payment of rent or any arrangement made to pay the rent is a relinquishment in fact, which would entitle the landlord to eject the tenant. Section 49 of the Bengal Tenancy Act does not apply to such a case.—*Amirunessa* v. *Jainat*, 27 Ind. Cas. 271=19 C. W. N. 43=20 C. L. J. 548.

The plaintiff, a *Gomasta* of the landlord of a village, obtained certain lands from the landlord and let them out to the defendant. In a previous rent suit brought by the plaintiff against the defendant, the defendant had pleaded that he had always paid his rent to the plaintiff for the benefit of the landlord and that the plaintiff was nothing more than a *Gomastah*, and he was a *raiyat* holding directly under the landlord. The rent suit was decided in favour of the defendant and the plaintiff then sued that in establishment of his title as *raiyat* he could eject the defendant without notice as a trespasser: *Held*, that the decision in the rent suit did not operate as *res judicata* on the question of title of the plaintiff.

There is nothing in the Bengal Tenancy Act which expressly takes away the right of the heirs of an under-*raiyat* to succeed to the remainder of the term granted by the *raiyat* within the powers conferred on the latter by section 85, and apart from custom or express enactment there is no doubt that a lease for a term devolves upon the heirs of the original lessee. On the expiry of the term the heirs may be ejected without notice under section 49 (*b*) of the Bengal Tenancy Act.—*Alijan* v. *Raham*, 31 Ind. Cas. 26=22 C. L. J 232.

A notice under section 49 of the Bengal Tenancy Act, to which under-*raiyats* are entitled, is indeed required before ejectment, but that does not apply to a superior landlord who is claiming to re-enter because the occupancy *raiyat* has forfeited his holding by having transferred it without the consent of the landlord.—*Jadab* v. *Girinda*, 29 Ind. Cas. 466.

Where a *raiyat* grants a lease allowing the lessee to hold the land from generation to generation, and gets rent therefrom, the lease is a nullity, and the acceptance of the rent from the lessee cannot effect a ratification of the lease, which is initially void.—*Mohim* v. *Baidya Nath*, 21 C. L J. 478=29 Ind. Cas. 879.

Section 50.

The words "so far as it relates to land held by a *raiyat*" in section 50, sub-section (*3*), clearly imply that the operation of the section so far as it relates to land held by a tenure-holder, is affected by the separation of the land from other land which formed with it a single tenure —*Uday* v. *Nripendro*, 36 C. 287.

The application of section 50 of the Bengal Tenancy Act is limited to suits or proceedings under the Bengal Tenancy Act.—*Lala Mohabir* v. *Charles Fox*, 9 C. L. J. 467.

Where a tenant has paid Rs. 23-14-1¼ gds. as rent for 60 years before suit, but in the rent receipts up to 1282 B. S., the amount was stated to be the total of the rent, *Jalaparabi* and exchange to convert *sicca* rupees into Company's coin, but after

that year the details were omitted in the receipts and only the payable rent Rs. 23-14-1¼ gds., appears: *Held*, that even under the above circumstances the tenant is entitled to the presumption under section 50 of the Bengal Tenancy Act.—*Brindamoyi* v. *Nripendra*, 1 Ind. Cas. 21.

Where a landlord brings a suit for ejectment against his tenant on the allegation that the latter has transferred his holding which is a non-transferable one to the other defendant: *Held*, that the suit is not under the Bengal Tenancy Act and that the presumption of section 50 cannot be extended to the suit.—*Babua* v. *Abdul*, 2 Ind. Cas. 992.

When an application is made under section 105, the tenant is entitled to the presumption of section 50.—*Prithi* v. *Basarat*, 13 C. W. N. 1149.

The presumption which would have applied to the six different tenures if they had stood separately, would apply to the amalgamated tenure under section 50 of the Bengal Tenancy Act.—*Prithi* v. *Hazari*, 5 Ind. Cas. 453.

A suit for declaration that an entry in the record-of-rights is wrong, is a suit under the Bengal Tenancy Act and as such the presumption under section 50 of the Act is applicable to it.—*Rameshar* v. *Raghunandan*, 5 Ind. Cas. 266.

The object of the Legislature in providing for the presumption as to fixity of rent mentioned in section 50 of the Bengal Tenancy Act was to provide, in suits or proceedings under the Act, that is, in suits or proceedings between landlords and tenants as such, an easy method of determination of the rights of parties.—*Nityananda* v. *Nanda Kumar*, 13 C. L. J. 415=10 Ind. Cas. 163.

The presumption mentioned in section 50 of the Bengal Tenancy Act applies only to cases which may be called suits or proceedings under the Bengal Tenancy Act. A suit for ejectment on the allegation that a tenant of a non-transferable holding sold it to the defendant and has abandoned the land, is

not a suit or proceeding under the Bengal Tenancy Act.—*Buzlul Karim* v *Satish Chandra*, 13 C. L. J. 418=15 C. W. N. 752=10 Ind Cas. 325.

Although the provisions of section 50, clause (*2*) Bengal Tenancy Act, apply only to suits or proceedings under the Act, it does not follow that a Court is precluded from drawing an inference, from the fact of long payment of rent, at a uniform rate that the *jote* has been held at a fixed rent since the Permanent Settlement.—*Mukta* v. *Badul*, 10 Ind. Cas. 164.

The Court may infer from the fact of long possession of land at an unvarying rate of rent that the tenancy is permanent.—*Uddhab* v. *Dhankrishna*, 20 Ind. Cas. 263.

A small variation in rent, which is unexplained, is not sufficient to rebut the presumption which arises under sub-section 2 of section 50 of the Bengal Tenancy Act, and to deprive a tenant of the benefit of the presumption of uniform payment from the time of the Permanent Settlement.—*W. M. Grant* v. *Har Sahay*, 18 C L. J. 76=20 Ind Cas. 53.

Although provisions of section 50, clause (*2*), of the Bengal Tenancy Act apply only to suits or proceedings under the Act, it does not follow that it is not open to the Court to draw an inference, in view of all the circumstances, as a *jote* having been held at a fixed rent from the Permanent Settlement, from the fact of long payment of rent at a uniform rate.—*Pran Krishna* v. *Mukta*, 18 C. L. J. 193=21 Ind. Cas. 544.

It cannot be laid down as an inflexible rule of law applicable to all cases, that a sub-division or amalgamation of land negatives the statutory presumption in favour of a tenant under section 50, sub-section (*1*) of the Bengal Tenancy Act.—*Adit Sing* v. *Sukhraj*, 17 C. L. J. 435=21 Ind. Cas. 385.

Where in a suit brought more than 20 years before the present suit a tenure-holder asserted that his rent was a certain fixed sum and in the present suit also the same rent was claimed and

there was no evidence of any alteration of rents: *Held*, that the fact that the same rent was claimed in the present suit was an admission of fixity of rent, and that the defendants were entitled to the presumption under section 50 of the Act.—*Dinamani* v. *Jagat*, 23 Ind. Cas. 773.

Where the tenants have been recorded as occupancy *raiyats* in the record-of-rights in view of the provisions of section 115 in a suit for enhancement of rent by the landlord, the tenant is not entitled to the benefit of the presumption arising under section 50 (*2*).—*Horihar* v. *Ajub*, 22 Ind. Cas 604.

Where in a proceeding for settlement of rent under section 105 of the Bengal Tenancy Act, the settlement officer held that the rent of the tenant was not enhancible by reason of the application of section 50 of the Bengal Tenancy Act, and the special Judge on appeal held that the tenure having originated in a *kabuliyat* of 1238, the rent was enhancible: *Held*, that as the *kabuliyat* was a document by which a previously existing lease was recognised, the presumption under section 50 of the Act applied.—*Bisheshar* v. *Rajendra*, 18 C. W. N. 949=25 Ind. Cas. 228.

The presumption arising under section 50 of the Act as to the tenant having held the land under the same rent from before the Permanent Settlement does not apply to the case of a tenant who has been recorded in a record-of-rights prepared under Chapter X. of the Act.—*Birendra* v. *Faizuddi*, 22 Ind. Cas. 943.

Where a *raiyat* proved that for over 20 years that is to say, from 1882 he had been paying the same rent for the holding: *Held*, that the presumption arising under section 50 (*2*) of the Bengal Tenancy Act that he had held the land at uniform rate of rent from the time of the Permanent Settlement was not rebutted by the landlord proving slight variation in the rents paid between 1864 and 1878, which was sufficiently explained by a very nearly corresponding action in the area.—*W. M. Gant* v. *Horsa*, 19 C. W. N. 117.

A *kabuliat*, which only proves the recognition of an already existing tenure, does not amount to the contrary evidence required by sub-section (*2*) of section 50 of the Act.—*Bisseswar* v. *Rajendra*, 19 C. W. N. 949=25 Ind. Cas. 228.

Section 51.

A prior decision in a rent suit may be taken to determine the rent claimed in that suit, and to give rise, under section 51 of the Bengal Tenancy Act, to the presumption that the rents for subsequent years remained the same.—*Beni* v. *Raj Kumar*, 17 Ind. Cas. 111.

The presumption under section 51 of the Bengal Tenancy Act applies not only in respect of a particular year on proof of the rate of rent for the preceding year, but also to each successive year, unless the tenants prove that the conditions of the tenancy have altered in the meantime.—*Rajabala* v. *Grish*, 25 Ind. Cas. 552.

The presumption, arising under section 51 of the Bengal Tenancy Act, 1885, applies not only in respect of a particular succeeding year when it is proved that rent was realised for the immediately preceding year at a particular rate, but also to each successive year, one after another, until its operation is arrested by proof on the part of the tenant that the conditions of the tenancy were altered in the meanwhile.—*Rajabala* v. *Grish*, 25 Ind. Cas 552.

Section 52.

Where the defendant had a *jote* under the plaintiff and others comprising 200 *bighas*, and on measurement it was found to have increased to 320 *bighas*, and the plaintiff brought a suit for his share of compensation for use and occupation of the excess area: *Held*, that the plaintiff is entitled to treat the excess land as a new holding and not as an addition to the original holding and to sue independently of section 52 of the Bengal Tenancy Act, and so is not barred by section 188 of that Act —*Abdul* v. *Rajindra*, 1 Ind. Cas. 312.

In order to bring a case within section 52 of the Bengal Tenancy Act, the landlord must establish the area for which rent has been previously paid by the tenant: he must next establish the present area held by the tenant; he is then entitled to claim additional rent in regard to the excess area.—*Lakhi* v. *Sri Ram*, 15 C. W. N. 921=14 C. L. J. 146=11 Ind. Cas. 212

A claim for a batement of rent does not come within the perview of section 52, clause (*e*) of the Bengal Tenancy Act, where the remission is claimed not on account of land not found in the possession of the tenant, but on account of land which, though included in his tenure, he was obliged to leave uncultivated on account of the necessity of having to erect embankments to protect other land, and remission for land so left out is provided for in the written contract between the parties.—*Sree Kant* v. *Irshad Ali*, 16 C. L. J. 225=17 Ind. Cas. 173.

The institution of a suit for alteration of rent on alteration of area, under section 52 of the Bengal Tenancy Act, is an act which the landlord is authorized to do under that Act, within the meaning of section 188, and which must be done by all the joint landlords together or by their representative.—*Sati* v. *Radha*, 16 C. L. J. 427=18 Ind. Cas. 197.

Section 52 of the Bengal Tenancy Act applies to cases in which the area in excess for which rent had been previously paid is included within the original holding as well as to cases in which new land has been taken by the tenant.—*Darik* v. *Aswini*, 20 Ind. Cas. 659.

In a suit for increased rent under section 52 of the Act for a certain area of land found to be in excess of the land leased to them it is found that the standard of measurement was the same when the land was first let out and when the excess area was discovered and that there has been an increase in the area in possession of the tenant, the Court gave a decree to the plaintiff for rent for the excess area.—*Baidya* v. *Jawahir*, 23 Ind. Cas. 794.

Where a *kabuliat* provided that the tenant should not claim reduction of rent either on account of celestial or terrestrial disturbance or on account of any village practice or usage except that mentioned therein, the plea of custom in the village for reduction of rent should not be allowed. Section 52 clause (*b*) of the Bengal Tenancy Act, entitling a tenant to a reduction of rent for deficiency of the holding does not apply to *diaru* lands as the tenant does not acquire a right of occupancy except after a possession for twelve years and until then he is liable to pay the rent agreed upon between him and his landlord — *Srinivas* v. *Ram Raj*, 18 C. W. N. 598=22 Ind. Cas. 822.

In a suit for possession of a tank on the ground of dispossession in the alternative for assessment of rent, it was found that the land in suit was not part of the original holding of the defendant but was subsequently acquired as an addition to the original holding, and the lower Court refused to give possession, but decreed the liability to pay rent: *Held*, that the suit was not maintainable as not being framed under section 52 of the Bengal Tenancy Act, though the facts found were such as would have been necessary to find if the suit had been framed as one under section 52.—*Hora Chandra* v. *Radha*, 20 C. L. J. 296.

If the Court draws the presumption under section 56 sub-section 6, it follows that the rent is to be determined according to the area and that the rent was not a consolidated one.—*Uma* v. *Tarini*, 19 C. L. J. 451=25 Ind. Cas 522.

If once it be held that a Court is entitled to make the presumption permitted, though not made obligatory, by section 52(*6*) of the Bengal Tenancy Act, it follows that the rent is one to be determined by reference to the area and is not a consolidated rent.—*Uma Singh* v. *Tarini*, 19 C. L. J. 451=25 Ind. Cas. 532.

Where on the interpretation of a *kabuliat*, it was plain (*1*) that the area of the land demised was assumed to be 15 *bighas* without actual measurement (*2*) that the rent was assessed at

the lump sum of Rs. 15-10 on the assumption that the area was 15 *bighas*: (*3*) that the landlord reserved his right to have the lands measured and the rent assessed at the prevailing rate: *Held*, that under sections 52 and 30 of the Bengal Tenancy Act, the landlord was entitled to claim additional rent for excess land as also enhancement of rent.—*Ejel* v. *Felai*, 28 Ind. Cas. 498= 21 C. L. J. 309.

Section 55.

If a landlord receives rent for one year, he cannot eject for arrears due previous to that year. Therefore, where a landlord sues for arrears of rent for more than one year, the landlord's claim for ejectment for non-payment of arrears of rent for all the years before the last must be held to have been waived, and a decree for ejectment can be made for non-payment of the arrears due only for the year immediately preceding that in which the suit is brought.—*Kalanand* v. *Gunput*, 11 Ind. Cas. 974.

Section 56.

The transferee of a tenure is entirely within his rights when he demands a receipt in the prescribed form under section 56, clause (*3*) of the Bengal Tenancy Act, with a statement therein that he is the tenant.—*Rup Chand* v. *Narendra*, 28 Ind. Cas. 683=19 C. W. N. 332.

Section 58.

A collector has jurisdiction to transfer an enquiry under section 58, clause (*3*) of the Bengal Tenancy Act, into a case of withholding receipts by a landlord, to a Sub-Divisional Officer who is authorized by the Government to discharge the functions of a collector under that section.—*Phanidhar* v. *Emperor*, 17 C. W. N. 571=40 C. 465=18 Ind. Cas. 891.

Section 60.

A registered proprietor can sue for and obtain a decree for rent, although an entry in the register in the name of a former mortgagee has not been expunged.—*Syed Hussain* v. *Ram Subhag*, 11 C. L. J. 163.

Section 60 of the Bengal Tenancy Act precludes a defendant in a suit for rent brought by the registered proprietor from raising a defence that the rent is due to a third person, even where the plaintiff is not able to prove realisation of rent from the defendant for the 16 annas share.—*Pargan* v. *Nanku*, 8 Ind. Cas. 832.

Where the name of a landlord is registered in respect of certain share but it is found that he has collected rent separately in respect of a larger share, he is entitled to sue in respect of the larger share —*Shdrashi* v. *Romesh*, 13 Ind. Cas. 451.

Section 61.

There is no law which entitles a Court to call upon a tenant to file along with his application for deposit of rent a copy of the notice to be served upon the landlord.

Rule 10, sub-rule (*1*) of the General Rules and circular orders issued by the High Court (*Vol. L. page 5*) provides that parties in civil cases shall file, with their applications for the issue of process, printed forms of the same duly filled up in accordance with the rules of the High Court regarding the issue of process, the date of appearance, and the date of the process will be left blank. This rule has no application to the case of a deposit of rent made by a tenant

In the circumstances of the case, the High Court directed the granting of a receipt to the tenant under the provisions of sections 61 and 62 of the Bengal Tenancy Act.—*Tara Charan Maity* v. *Paresh*, 14 C. L. J. 116.

There is no law under which the Court can call upon a tenant to file, along with his application for deposit of rent, a copy of the notice to be served upon the landlord.—*Tara Charan* v. *Paresh Chandra*, 14 C. L. J. 116=11 Ind. Cas. 723.

Section 61 of the Bengal Tenancy Act is applicable to a case where the parties agreed that upon failure to deliver rent in kind a fixed sum is to be paid in lieu thereof.—*Kasi* v. *Umakant*, 20 C. L. J. 153=25 Ind. Cas. 171.

A deposit of rent without interest due thereon is not a sufficient deposit within the meaning of section 61 of the Act.—*Shyam* v. *Bhinga*, 23 Ind. Cas. 777.

A *putnidar* who entertains a *bonâ-fide* doubt as to who is entitled to receive rent from him is entitled to deposit the rent in Court under section 61 of the Bengal Tenancy Act, no provision of the *Putni* Regulation (*VIII. of 1819*) being in any way affected by that section.—*Batakrishna* v. *Janaki*, 41 C. 1000=18 C. W. N. 916=24 Ind. Cas. 71.

Section 65.

Where the tenancy is not a tenure the provisions of section 65 of the Bengal Tenancy Act, will not fetter the *zemindar*.—*Jarraw Kumari* v. *Hanifuddin*

The decree referred to in section 65 is a decree obtained by all the landlords or at all events a decree obtained by some of the landlords for the entire rent in the presence of all, and not a decree obtained by one co-sharer for his share of the rent.—*Mofizuddin* v. *Ashutosh*, 14 C. W. N. 352.

Whether section 65 applies in this case or not.—*Susila* v. *Indu* 18 Ind. Cas. 328.

Sections 65 and 66 of the Bengal Tenancy Act cover all the remedies provided by law for the landlord to recover the rent. The right to proceed to sale in the one case, and in the other to eject is dependant on the existence of the relationship of landlord and tenant at the time when the remedy is sought to be enforced.—*Arthur* v. *Bahadur*, 18 C. W. N. 747=23 Ind. Cas. 632.

Section 65 of the Bengal Tenancy Act does not contradict section 17 of *Putni* Regulation.—*Basant* v. *Khulna Loan Company* 20 C. L. J. 1.

A landlord who has parted with his proprietary interest, is not entitled to invoke the special remedies vested in a landlord under section 65 of the Bengal Tenancy Act, but still he

can have a sale in execution of his decree under the Code of an interest which is saleable.—*Ramprasad* v. *Ram Charan*, 27 Ind. Cas. 601.

Section 66.

The landlord may institute a suit for ejectment under section 66 of the Bengal Tenancy Act at the time of the year mentioned in that section, but if he does not exercise his option at once, but claims rent for any portion of the year subsequent thereto, he treats the tenancy as existing after the specified date, and cannot ask for ejectment in respect of arrears due for the year preceding that date.—*Kalanand* v. *Gunput*, 16 C. W. N. 104.

Section 66 of the Bengal Tenancy Act refers to an arrear for one year only. If the landlord omits to sue for ejectment in default of the payment of an arrear for one year, he must be deemed so far to have waived his right to turn out the tenant.—*Jagat Chandra* v. *Munshee Ali Sankar*, 13 Ind. Cas. 671.

Section 67.

Where before the passing of the Bengal Tenancy Act a tenant agreed to pay interest on arrears of rent at the rate of one anna per rupee per month, and there was a distribution or apportionment of the rent subsequent to the passing of the Act: *Held*, that the provision of section 67 of the Bengal Tenancy Act has not been contravened.—*Madhu Mala* v. *Alfazaddi*, 13 C. W. N. 962.

Section 67 of the Bengal Tenancy Act applies to Orissa.—*Gobinda* v. *Ram Chandra*, 13 C. W. N. 95.

Section 67 of the Bengal Tenancy Act is not applicable to *makurari* leases, where there is no contract to the contrary in them.—*Ajeb* v. *Ram Narain*, 23 Ind. Cas. 108.

Section 67 of the Bengal Tenancy Act relating to interest affects the contract between the parties, and the restriction on the liability of the tenants to pay interest at the rate of 12½

per cent. per annum is a matter of substantive right, and does not apply to suits.—*Krishna* v. *Salim*, 27 Ind. Cas. 614.

Section 74.

In a *kabuliyat*, the fixed rent mentioned was Rs. 360. Then there was an additional item under the head of "price of presents and unpaid labour" amounting to Rs. 17-4: *Held*, that the sum of Rs. 17-4, which was the money equivalent of the presents and labour, was in the nature of an imposition in addition to the actual rent within the meaning of section 74 of the Bengal Tenancy Act, and could not be recovered.—*Sree Kant* v. *Irshad*, 16 C. L. J. 225=17 Ind. Cas. 173.

Whether a sum claimed by the landlord is or is not an illegal cess, must depend upon the construction of the contract before the Court. If upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound to pay it; if it can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void.—*Mathura* v. *Tota*, 16 C. L. J. 296=17 Ind. Cas. 177.

Section 75.

Section 75 merely enables a tenant to recover from his landlord certain penalty in addition to the amount or value of what is exacted, if the suit is brought within six months from the date of exaction, and the limitation provided by the section does not bar a suit to recover the excess amount where no penalty is claimed.—*Nogendra* v. *Raja Bibi*, 17 C. W. N. 374=17 Ind. Cas. 504.

Section 85.

A sub-lease granted by a *raiyat* is void only under the circumstances specified in section 85 of the Bengal Tenancy Act as against the landlord, but is not necessarily void as far as the *raiyat* and the under-*raiyat* themselves are concerned. It does not bar the creation of a right in the under-*raiyat* to

the extent of the right of the *raiyat* himself.—*Tamijuddi* v. *Asgar*, 36 C. 256.

The right of the landlord under section 85 (*1*) is a right vested in him by virtue of his landlord's interest and not by virtue of any other interest he might acquire.—*Lal Mahomed* v. *Jagir Sheikh*, 2 Ind. Cas. 654.

The object of the section 85 (*3*) is to restrict the right of sub-letting as against the landlord.—*Bipin* v. *Amirta*, 9 C. L. J. 76.

The law distinctly provides that a *raiyat* has power to grant a sub-lease, though that power is restricted by section 85 of the Bengal Tenancy Act to nine years.—*Mahomed* v. *Choa*, 7 Ind. Cas. 750.

Section 85 of the Bengal Tenancy Act defines the restrictions on sub-letting by a *raiyat*. The first two sections must be read together. The question of invalidity of a sub-lease granted in contravention of the provisions of sub-sections (*1*) and (*2*) of section 85 can be raised only by the landlord of the *raiyat*. In the case of a contract between the grantor and the grantee, a question of estoppel may arise.—*Manik* v. *Bani*, 13 C. L. J. 649=10 Ind. Cas. 469.

The representatives in interest of the *raiyats*, who granted a lease to under-*raiyats*, are not entitled, as between themselves and the under-*raiyats*, to take up the position that the grant was inoperative.—*Arab Ali* v. *Rachimuddi*, 13 C. L. J. 656=10 Ind. Cas. 562.

A *raiyat* gave his under-*raiyat* a lease for nine years, and and it was stipulated that after the expiry of the term, the *raiyat* would give the under-*raiyat* a fresh lease of the land on a fair rent: *Held*, that the stipulation was not null and void, that the lease was not in contravention of the terms of section 85 of the Bengal Tenancy Act, and that the *raiyat* could not eject the under-*raiyat* without giving him the option to take

a fresh lease at a fair rent.—*Ali Mohammad* v. *Nayan.* 13 Ind. Cas. 912=15 C. L. J. 122.

A sub-lease by a *raiyat* purporting to create a permanent tenancy, that is, to create a term exceeding nine years, even if registered in breach of section 85 clause (*2*) of the Bengal Tenancy Act, must be treated as though it was not registered for it was a registration in contravention of law. The document, therefore, is inadmissible in evidence, and can not affect the holding —*Jarip* v. *Durpa,* 16 C. L. J. 114=15 Ind. Cas. 476.

The true object of section 85 of the Bengal Tenancy Act, is to entitle the landlord of a *raiyat* to question the validity of a sub-lease granted in contravention thereof. Thereiore, an under-*raiyat,* who holds under a permanent lease granted by a *raiyat,* can successfully maintain a suit for possession or defend his possession against the *raiyat* or his representatives in interest, It is not open to a *raiyat* in such a suit to question the validity of the sub-lease on the ground that it was granted in contravention of clause (*2*) of section 85 of the Bengal Tenancy Act.—*Sadhan* v. *Lakhan,* 15 Ind. Cas. 255.

The effect of sub-section (*2*) of section 85 of the Bengal Tenancy Act renders altogether void any sub-lease by a *raiyat.* for a term exceeding nine years, and, therefore, a registered permanent sub-lease by a *raiyat* is void and not binding even between the parties.—*Zelan* v. *Adu,* 17 C. W. N. 468=10 Ind. Cas. 279.

Where a lease was for a term exceeding 9 years and so under section 85 Bengal Tenancy Act, the lease is not admissible in evidence.—*Kartick* v. *Bama,* 20 C. W. N. 184.

A sub-lease registered in contravention of the provisions of section 85 (*2*) of the Bengal Tenancy Act is inoperative — *Fakir* v. *Banamali,* 18 C. L. J. 252=21 Ind. Cas. 104

Section 85 of the Bengal Tenancy Act has no application to a permanent lease created by an under-*raiyat* in favour of a sub-lease; nor can the provisions of that section be applied to such a case by analogy.—*Guru Das* v. *Kali Das*, 18 C. W. N. 882=24 Ind. Cas. 287.

Section 85 of the Bengal Tenancy Act has no application to a sub-*raiyat* granting an under-lease.—*Parushulla* v. *Setal*, 28 Ind. Cas. 267.

Section 86.

The operation of sub-section 6 of section 86 of the Bengal Tenancy Act is confined to a case where the holding is subject to an incumbrance secured by a registered instrument and does not extend to a case where the holding is subject to a charge by virtue of clause (*b*) of sub-section (*1*) of section 171 of the Act.—*Nabadip* v. *Bhairab*, 13 C. W. N. 97.

A sale of a portion of a non-transferable holding is not an incumbrance within the meaning of section 86, sub-sections (*6*) and (*7*) of the Bengal Tenancy Act.—*Tamiz uddin* v. *Khoda*, 14 C. W. N. 229.

It is not open to a registered tenant of an occupancy holding to surrender, in collusion with the landlord, a part of the holding in favour of the latter, with the express object of destroying the right of his co-sharers or their transferees and thus prejudice their title and possession; and the surrender cannot be accepted as a good foundation for an action in ejectment by the landlord.—*Gobinda* v. *Uday*, 15 Ind. Cas 264.

It is doubtful whether a sale of a portion only of a non-transferable occupancy holding comes under sub-section 5 of section 86 of Bengal Tenancy Act.—*Askar* v. *Gopi*, 19 C. L. J. 313=18 C. W. N. 601.

Where a part of an occupancy holding not transferable by local custom or usage was usufructuarily mortgaged by a registered document with the covenant not to surrender, and the

mortgagor surrendered it: *Held*, that as the encumbrance is by a registered document and the surrender was without the consent of the plaintiff, the surrender is invalid under section 86 (*6*) of the Bengal Tenancy Act.—*Ram Udar* v. *William*, 27 Ind. Cas. 564=19 C. W. N. 268.

The validity of the encumbrance must be limited to the position of the transferor and the transferee, *i e.*, the tenant and the encumbrancer. A transfer of a portion of a non-transferable holding of an occupancy *raiyat* is so far valid against the landlord as not to entitle him to enter upon the portion transferred.—*Hosani* v. *Sadir*, 30 Ind. Cas. 252.

Section 87.

Section 87 of the Bengal Tenancy Act contemplates cases in which there is cultivation of the holding by the tenant, and consequently a holding, consisting of land partly horticultural and partly homestead, does not strictly come within the purview of that section.—*Sashi* v. *Bepin*, 9 Ind. Cas. 20.

A notice to the Collector under clause (*2*) of section 87 of the Bengal Tenancy Act is not necessary to make an abandonment complete and effectual. The notice is important for the purpose of the suit which the tenant is allowed to bring under clause (*3*), but is not essential to complete the abandonment; and a landlord who has not given such notice is still at liberty to prove that an abandonment has in fact taken place.—15 Ind. Cas. 639.

Section 87 of the Bengal Tenancy Act is a special section and enables a landlord to exercise a certain definite power as defined therein on the establishment of certain conditions. Where those conditions occur, the landlord can treat the holding as abandoned on following the procedure laid down in the section.—*Monohar* v. *Ananta*, 17 C. W. N 802=20 Ind. Cas 198.

Section 87 of the Bengal Tenancy Act is not exhaustive and the landlord may proceed by suit, if he can prove that the

facts and circumstances of the case lead to an inference of abandonment.—*Motookdhari* v. *Jugdip*, 21 C. L. J. 261=18 Ind. Cas. 343.

Where a tenancy in favour of several tenants has not been split up and even one of the original tenants still remains on the land though the others drop away, there is no abandonment within the meaning of section 87 of the Bengal Tenancy Act.—*Gopi* v. *Haladhar*, 30 Ind. Cas. 583.

Section 88.

In the absence of a contention that the provisions of section 88 of the Bengal Tenancy Act have been strictly complied with, it is not necessary for the Court to take evidence to determine whether a portion of the holding was sold.—*Rammoyi* v. *Rupai*, 13 C. L. J. 267=9 Ind. Cas. 801.

A *durpatni* lease stated the annual rent to be Rs. 69. A few days after the landlord wrote to the lessee that as the rent of Rs. 69 was not supported by the state of things in the Mofussil, it should be reduced to Rs. 64. The rent was paid at that rate for over 30 years: *Held*, that the landlord's transferee cannot claim rent at the higher rate. A *dakhila* signed by the landlord's agent containing a recital that the rent in half share is Rs. 32, amounts to a consent in writing by a landlord to a sub-division of the *durpatni* within section 88 of the Bengal Tenancy Act.—*Raj Kumar* v. *Rajani*, 13 Ind. Cas. 449.

Section 89.

A lease provided that the tenant lessee would not be entitled to alienate the property nor to place the land in possession of any body else. It also contained a covenant that, if the lessee acted in contravention of the said condition, the landlord would be entitled to take possession without recourse to the Court, and the tenant would not be allowed to plead that he had acquired a right of occupancy under section 6 of Act X. of 1859. In a suit

for ejectment by the landlord against the tenant and his transferee: *Held*, that in spite of the condition in the lease, the landlord was bound by the provisions of section 89 of the Bengal Tenancy Act. But when the tenant lessee had submitted to a decree for ejectment, his transferee could not avail himself of the provisions of sections 89 and 153 of the Bengal Tenancy Act, as he was under the terms of the lease a trespasser.—*Budhimanta* v. *Sarat Chandra*, 13 C. L. J. 372.

Section 90.

A Court has no power to deal with the question, what is the *rasi* or standard of measurement in a proceeding under sections 90 and 91 of the Bengal Tenancy Act.—*Ashutosh* v. *Joy Lal*, 17 C. L. J. 50=18 Ind. Cas. 621.

The period of ten years mentioned in sub-section (*3*) of section 90 has to be computed from the date of the last measurement under section 90, and the local inquiry mentioned in sub-section (*2*) of the section 158 is not the measurement contemplated by sub-section (*3*) of section 90.—*Bawri* v. *Monohar*, 19 Ind. Cas. 906.

Section 91.

A landlord can, in one application under section 91 of the Bengal Tenancy Act, include the lands of more than one tenant and apply for an order from the Civil Court against several tenants under that section.—*Haji* v. *Raghu*, 19 C. W. N 231.

Section 93.

The present common manager appointed under section 93 of the Bengal Tenancy Act can sue the former common manager for an account.—*Mahomed* v *Upendro*, 2 Ind. Cas. 597.

Section 95.

The common manager appointed under the provisions of the Bengal Tenancy Act fully represents the co-owners for the purposes of defending a suit for declaration of title to, and recovery of possession of, immoveable property brought against them,

and it is immaterial whether the heirs of some of the co-owners were brought on the record too late for a suit against them.—*Chowdhury Kirtibash* v. *Umesh*, 14 C. L. J. 61=11 Ind. Cas. 397.

An order of the District Judge appointing a common manager is illegal if the formalities provided by section 95 of the Bengal Tenancy Act are not complied with and, therefore, a common manager so appointed does not acquire the statutory powers conferred on a common manager duly appointed under the Act.—*Kanai Lal* v. *Besir*, 26 Ind. Cas. 498.

Section 98.

The powers of a common manager under section 98 (*3*) of the Bengal Tenancy Act are the same as the co-owners jointly might, but for his appointment, have exercised.—*Bakta* v. *Kishori*, 27 Ind. Cas. 307.

Section 100.

The High Court having made rules under section 100 of the Bengal Tenancy Act, defining the powers and duties of the managers, it has power under section 15 of the Charter to superintend and revise the orders of a District Judge.—*Satendra* v. *Raj Mohan*, 29 Ind. Cas. 177.

Section 101.

Under the Bengal Tenancy Act as it stood in 1898 a Settlement Officer, when a record-of-rights was being prepared, could of his own motion under Chapter X. of the Act make a settlement of fair and equitable rent in cases where a settlement of Land Revenue was about to be made. Nowabad land forms part of Government estate and rents due to the Government from such estate is Land Revenue within meaning of sections 101 (*2*) (*a*) and 104.—*Dharma* v. *Romesh*, 24 Ind Cas. 820.

Under section 101 of the Bengal Tenancy Act an entire district is included in the meaning of the term "local area," although, an area smaller than an entire estate or country as a whole

is usually meant by the term local.—*Brojendra* v. *Khalil*, 21 C. L. J. 489=29 Ind. Cas. 885.

Section 103A.

Entries in a draft record-of-rights published under section 102A of the Bengal Tenancy Act are not admissible in evidence in a suit for rent. It is not until the record-of-rights is finally published that the presumption of correctness arises.—*Gulab* v. *Ramratan*, 18 C. W. N. 896=27 Ind. Cas. 229.

The provision of section 103A of the Tenancy Act that the publication of the record-of-rights shall be conclusive evidence, that it has been duly made under the chapter does not preclude a Court from enquiring as to the correctness of the resultant entry, it only precludes the Court from going into the question whether the procedure under the Chapter has been followed.—*Ramdas* v. *Biprodas*, 19 C. W. N. 35=27 Ind. Cas. 446.

Section 103B.

The presumption contemplated by section 103B of the Bengal Tenancy Act is that the entries were correct at the time of the preparation of the record-of-rights.—*Luchmi Pershad* v. *Ekdeshwar*, 13 C. W. N. 181.

Section 103B makes the record-of-rights conclusive and makes it correct until the contrary is proved.—*Ambica* v. *Joy Chandra*, 13 C. W. N. 210.

When the correctness of any entry in the record-of-rights is in dispute, the evidence of facts and circumstances subsequent to the publication of the record is not the only evidence which can be produced to rebut the correctness but any documentary or oral evidence or facts and circumstances existing prior to the publication are admissible and should be taken into consideration in determining whether the presumption has been rebutted or not.—*Sheonandan* v. *Bacha*, 9 C. L. J. 284.

A landlord brought a rent suit according to the rate mentioned in the *khatian*, but the Court without considering the

khatian passed a decree according to the rentals admitted by the tenant. In a subsequent rent suit, the landlord again claimed rent according to the *khatian*: *Held*, that, as the *khatian* was not taken into consideration in the decision of the first suit, the presumption of section 103B of the Bengal Tenancy Act is still in operation notwithstanding the judgment in favour of the tenants in the first suit.—*Sharifunissa* v. *Sasadhar*. 14 C. W. N. 781.

The presumption in section 103(*B*) of the Bengal Tenancy Act is applicable to a suit instituted before the publication of the record-of-rights in which the entry is contained.—*Kamaleshar* v. *Ramhari*, 19 C. L. J. 348.

Under section 103B, the entries in the record-of-rights give rise to a presumption and neither the defendants' failure to take proceedings for the purpose of annulling or rebutting that presumption nor a decision under section 105 prior to the enactment of section 105(*A*) can avail to make themselves conclusive.—*Sashi* v. *Denamoyi*, 23 Ind. Cas. 615.

An entry as under-*raiyats* in the settlement record raises the presumption of the relationship of landlord and tenant under section 103 (*B*) clause 5 of the Act, which presumption may be rebutted by proper evidence.—*Nader Ali* v. *Asimaddi*, 23 Ind. Cas. 244.

Where the plaintiff held 203 bighas of land and was *prima facie* a tenure-holder and not a *raiyat*, but no document was in existence as evidence of the terms on which he held, and oral evidence proved that the tenancy in its inception was granted to the predecessors of the plaintiff for cultivating purposes and the plaintiff and his predecessors were described in former settlements as having the interest of *raiyats* and the plaintiff had also granted rent receipts describing the tenants under him as under-*raiyats*: *Held*, that the presumption created by section 103(*B*) of the Bengal Tenancy Act was rebutted.—*Kumeda* v. *Secretary of State for India*, 30 Ind. Cas. 255=19 C. W. N. 1017.

Section 104.

The effect of section 104J is not modified by section 103B, the two sections refer to different subjects.—*Ambica* v. *Joy Chandra*, 13 C. W. N. 210.

In a Government *khas mahal*, the defendant was an under-tenant of the plaintiff. By a contract made previously to the record-of-rights, the defendant had agreed to pay to the plaintiff rent at Rs. 10-2-0. The Revenue Officer fixed the fair rent payable by the defendant at Rs. 12, in preparing the record-of-rights: *Held*, that, under section 104 of the Bengal Tenancy Act, the Revenue Officer had jurisdiction to settle a fair and equitable rent, that his decision had the force of a decree and was *res-judicata* between the parties, and that the plaintiff was entitled to a decree at the rate of Rs. 12,—*Girish Chundra* v. *Indra Kumar*, 9 Ind. Cas. 360.

The meaning of section 104J of the Bengal Tenancy Act is, that unless an entry in the record-of-rights, settling a rent in accordance with the provisions of sections 104A to 104F, has been altered by means of a suit brought as contemplated by section 104H, the entry shall prevail.—*Prasanna Kumar* v. *Rachimuddin*, 15 Ind. Cas. 320.

The only relief which the plaintiff in a suit under section 104H can claim, is the alteration of an entry of the rent settled or the insertion of an entry as to the amount of rent to be settled.—*Jogendra* v *Secretary of State*, 17 Ind. Cas. 921

The words "every settlement of rent or decision of a dispute by a Revenue Officer," in section 9 of Act III. of 1898 (*B.C.*) are applicable only to those cases which a Revenue Officer has jurisdiction to try and are not applicable to a decision of a Settlement Officer as to the validity of a *lakheraj* title under section 104 of the Bengal Tenancy Act.—*Birendra* v. *Kali Tara*, 30 Ind. Cas. 953=22 C. L. J. 155.

Section 105.

An application under section 105 of the Act is none-the-less an application under that section even if a reference is made in it to section 52 of the Act.—*Preobarat* v. *Murat*, 2 Ind. Cas. 263.

A second appeal would lie if the Settlement Officer decided any matter which would properly come under section 106 of the Act.—*Pirthi* v. *Basarat*, 13 C. W. N. 1149.

Section 188 of the Bengal Tenancy Act is applicable to an application under section 105 clause (*1*) or clause (*2*) of the Act, and, therefore the application must be made by entire body of landlords.—*Kumar Krishna* v. *Girja*, 10 C. L. J. 458

A defence taken to an application under section 105 of the Bengal Tenancy Act, that a certain land is *lakhera*, is not the subject matter of an application made under section 105 or 106 within the meaning of section 109 as it stood before 1907.—*Misri* v. *Singh Bahadur*, 7 Ind. Cas. 71.

There is a well-marked distinction between the scope of section 105 and section 106. Section 105 contemplates a settlement of fair and equitable rent after the existing conditions of the tenancy have been determined and entries made in respect thereof in the record, finally published under section 103A. The proceeding under section 105, therefore, assumes the correctness of those entries which are taken as foundation of the enquiry.—*Pandab* v. *Ananda*, 12 C. L. J. 195

A second appeal may lie in a proceeding under section 106 of the Bengal Tenancy Act, but there is no right of second appeal in a proceeding for settlement of rent under section 105.—*Kali* v. *Gopal*, 9 C. L. J. 574

A tenant is entitled, even though the proceeding was taken under section 105 of the Bengal Tenancy Act, to a second Appeal provided that, in that proceeding, questions were raised

and decided which properly come under the provisions of section 106.—*Choa* v. *Rameshar*, 5 Ind. Cas. 160.

In a proceeding under section 105 of the Bengal Tenancy Act, there is no second appeal —*Kali Sankar* v. *Kaloo Mollah*, 9 Ind. Cas. 493.

A suit which concerns a matter, which has been the subject of an application made and proceedings taken under section 105 of the Bengal Tenancy Act, cannot be entertained by the Civil Court under section 109.—*Sheodhani* v. *Beni*, 16 C. L. J. 67=16 Ind. Cas. 935.

A proceeding, under section 105 of the Bengal Tenancy Act, can be instituted not only when there is no rent payable by the tenant to the landlord under the terms of a contract between the parties but also when rent is fixed by a contract.—*Aetowli* v. *Tarak*, 16 C. L. J. 328=17 Ind. Cas. 266.

An application under section 105 cannot be regarded as a suit.—*A. B. Chiodith* v. *Tulsi*, 17 C. W. N. 467=40C. 428=18 Ind. Cas. 130.

A Settlement Officer had jurisdiction to settle fair rents and the Special Judge on appeal had jurisdiction to direct settlement of fair rent on excess lands in a proceeding under section 105 of the Bengal Tenancy Act even before its amendment by Act III. B. C. of 1898.—*Dhunman* v. *Newas*, 20 Ind. Cas. 841.

The correctness of the record-of-rights can be impugned by the landlord in an application under section 105 and that the issues mentioned in section 105A can be tried in the proceedings under section 105 and they can be raised either by the landlord or by the tenant.—*Upendra* v. *Jamini*, 18 C. W. N. 268.

After a lapse of two months from the date of the final publication a suit under section 105 is not maintainable.—*Berhamdut* v. *Ramji*, 18 C. W. N. 466.

An application under section 105 of the Bengal Tenancy Act for settlement of fair and equitable rent cannot be maintained at the instance of one out of several joint landlords, it must be presented by the entire body of persons who are joint landlords.—*Behari* v. *Priya*, 28 Ind. Cas. 508=21 C. L. J. 305.

Section 105 of the Bengal Tenancy Act provides that a landlord or a tenant may make an application within a certain time for settlement of rent and upon such application the Settlement Officer is to settle a fair and equitable rent of the lands held, by the tenants.—*Safaruddi* v. *A. K. Fazal Huq*, 30 Ind. Cas. 414=21 C. L. J. 592.

Section 105A.

The obvious intention of enacting section 105A of the Bengal Tenancy Act is that, where a party, without resorting to the provisions of section 106, applies for the settlement of fair rent under section 105 and the issue mentioned in section 105 are raised, they shall be tried and decided by the Revenue Officer and the rent under section 105 will be settled accordingly. Some of the issues under section 105A can be raised by the landlord alone.—*Upendra* v. *Jamini*, 18 C. W. N. 268 =21 Ind. Cas. 37

Where one of the co-sharers granted a lease for the purpose of reclamation of jungle and waste land to a tenant who remains in possession for about ten years without objection: *Held*, that the tenant becomes a *raiyat* of all the co-sharers.—*Dakhyayani* v. *Mana*, 19 C. L. J. 113=22 Ind. Cas. 666.

Section 106.

Section 106 does not furnish an exclusive remedy, and, therefore, a suit in Civil Court is maintainable if the matter, upon which the decision of the Civil Court is sought, is not or has not already been subject of a suit under section 106.—*Pandab* v. *Ananda*, 12 C. L. J. 195.

Although a suit for alteration and correction of certain entries made in a record-of-rights would not lie in a Civil Court, yet a suit in which other reliefs are claimed is maintainable in Civil Court.—7 Ind. Cas. 340.

A suit under section 106 of the Bengal Tenancy Act is a suit for a declaratory decree, and the Court fee payable is Rs. 10 in all cases.—*Satish* v. *Gopal*, 7 Ind. Cas. 627.

Where a suit is instituted under section 106 of the Bengal Tenancy Act, the plaintiff has not only to start a *prima facie* case, but to prove by evidence that the entries in the record-of-rights are incorrect.—*Lachmi* v. *Sukhraj*, 9 Ind. Cas. 181.

As between landlords of neighbouring estates, the only question that can be raised in a proceeding under section 106 is as to possession at the date of the final publication.—*Kali Sundori* v. *Girija*, 15 C. W. N. 974=11 Ind. Cas. 184.

Where proceedings have been taken before a Settlement Officer, in respect of any matter under section 106 of the Bengal Tenancy Act; a Civil Court is precluded from entertaining a suit concerning such matter.—*Kalanand* v. *Prem Lal*, 9 Ind. Cas. 651.

The question of possession alone should be considered in a proceeding under section 106 of the Bengal Tenancy Act between two rival proprietors, but the question of title may legitimately arise and be decided in such a proceeding between two rival tenants or between a landlord and a tenant.—*Insar Ali* v. *Yakub*, 13 Ind. Cas. 311.

The dismissal of a suit, under section 106 of the Bengal Tenancy Act, for default, may bar a second suit of the same scope and nature, but it does not operate as *res-judicata*. Where there is no adjudication that the rent was as alleged by the tenant or by the landlord, the determination of the question in a subsequent suit between the parties is not barred.—*Sarjug* v. *Ajodhya*, 15 Ind. Cas. 863.

In the case of a suit brought before a Revenue Officer under section 106 of the Bengal Tenancy Act and claiming those reliefs only which are provided by that section, the institution fee would be that provided in clause (*iii*), Article 17 of Schedule II. of the Court Fees Act, that is, Rs 10.—*Chandi Charan* v. *Manoranjan*, 17 C. L J. 416=18 Ind. Cas. 275.

Under section 106 of the Bengal Tenancy Act, the Court cannot determine the question of title between rival proprietors.—*Ram Chandra* v. *Nanda*, 20 Ind. Cas. 298.

Section 106 of the Bengal Tenancy Act does not vest the Revenue Officer with power to pass a decree for possession. And if a suit under that section is transferred to a Civil Court for trial, the mere fact that that Court might have passed a decree for possession in its ordinary jurisdiction, cannot widen the permissible scope of the suit and the Civil Court cannot in that suit pass a decree for possession.—*Nilmoni* v. *Kedar*, 17 C. W. N. 750=20 Ind. Cas. 151.

When the settlement of land revenue is not being or about to be made, a dispute as to an entry in the records-of-rights, though there has been no "settlement of rents," should be decided by the machinery provided in section 106 —*Keshab* v. *Bhobani*, 18 C. L. J. 187=21 Ind. Cas. 538.

Under section 106 of the Bengal Tenancy Act, the Settlement Officer cannot decide questions of title between two rival proprietors, but he must confine himself only to the question of possession.—*Ramchandra* v. *Nanda*, 18 C. W. N. 938=19 C. L. J. 197.

The decision of a Settlement Officer which has the effect of a decree of the Civil Court does not include the order of dismissal for default under section 106 as the word decision implies an adjudication on merits.—*Parbati* v. *Tulsi*, 18 C W. N. 604.

The question whether a custom is reasonable or not is a question of law and not one of fact.—*Gausai* v. *Kaurmari*, 19 C. W. N. 1188=21 Ind. Cas. 312.

Section 9 of the Amending Act III. of 1898 clearly shows that the amendment of section 106 does not apply to the order of a Settlement Officer in the survey and record-of-rights.—*Nikunja* v. *Manikya*,, 30 Ind. Cas. 944=22 C. L. J. 148.

Where in the course of a proceeding under Chapter X. of the Bengal Tenancy Act, the Settlement Officer decided on 17th April 1897 that the defendants had failed to establish their alleged rent-free title, and on the basis of this decision rent was subsequently settled and the record finally published on the 1st December 1198: *Held*, in a subsequent suit by the landlord against the defendants for assessment of rent of the land, that the Settlement Officer had no jurisdiction under section 106 of the Bengal Tenancy Act, as it stood before the amendment to decide a question of this character, and his decision did not preclude the Court from determining the question of *lakheraj* title on the merits.—*Birendra* v. *Kalitara*, 20 C. W. N. 275.

Section 107.

The term decision in section 107 of the Bengal Tenancy Act implies an adjudication on the merits and does not include an order of dismissal of the suit for default —*Rameshwar* v. *Toolsi*, 20 Ind. Cas. 1=18 C. L. J. 128.

Section 108.

A restricted interpretation should not be placed upon the terms of section 108 of the Bengal Tenancy Act. A specially empowered Revenue Officer is invested under section 108 with power, not only to correct arithmetical or clerical error or errors patent on the face of the record, but to review on the merits his own order or revise the order made by another

officer, that is to direct a fresh investigation upon the merits.—*Parbati* v. *Tulshi*, 18 C L. J. 125=20 Ind. Cas 301.

Under section 108 of the Bengal Tenancy Act, a Revenue Officer, specially empowered by the Local Government in this behalf, has the power of revising any order or decision passed under sections 105, 105A, 106 or 107 made by himself or any other Revenue Officer. This power is not restricted to revision of the decision or order on the merits.—*Narain Singh* v *Iswardhari*, 30 Ind. Cas. 162=22 C. L. J. 57.

Section 108A.

Section 108A of the Bengal Tenancy Act applies only to Revenue Officer specially empowered by the Local Government in that behalf. The section entitles the Settlement Officer to correct the record where there has been a *bonâ-fide* mistake; such mistake need not necessarily be the mistake of the Settlement Officer; it may very well be a mistake made by one of the parties concerned. The section in substance authorises a Settlement Officer to re-consider the matter on the merits.—*Raj Mohan* v. *Alam Gazi*, 16 C. L. J. 339.

A record-of-rights had been prepared accurately, but an unauthorized interpolation had been made in it, which the Settlement Officer corrected: *Held*, that the entry had been made owing to a *bonâ fide* mistake of the Settlement Officer or of any of the parties within section 108A of the Bengal Tenancy Act; and no appeal lay to the special Judge under section 109A; that, therefore, no second appeal lay to the High Court, and that the High Court could interfere in revision.—*Baulchand* v. *Sirish*, 19 Ind. Cas. 916.

Section 109.

Where the question is not merely what amount of rent should be settled for the excess land in the tenants' possession, but also whether the excess land is liable to rent or not, a second appeal is not barred under section 109 sub-sec-

tion (3) of the Bengal Tenancy Act.—*Gunendra* v. *Rajendra*, 19 Ind. Cas. 924.

Section 109 of the Bengal Tenancy Act merely prohibits suits regarding matters which are or already have been the subject of proceedings under section 105 or section 106. The scheme seems to be that matters brought at once (or within a strictly limited time) before the Revenue Officer are to be dealt with by him, while matters not so brought before the Revenue Officer are left to the ordinary law and the Civil Court.—*Barhamdat* v. *Krishna*, 20 Ind. Cas. 910.

It is impossible to get behind the statutory bar raised by section 109 to the rent fixed in proceedings under section 105 so far as the proceedings have been properly conducted.—*Sashi* v. *Aswini*, 28 Ind. Cas. 981=19 C. W. N. 637.

Under the provisions of section 109 of the Bengal Tenancy Act, the decision of a Settlement Officer or rather a Revenue Court, with reference to what is the fair and equitable rent, is binding and conclusive, and the tenants are not entitled to question that decision in any Civil Court, provided that the question in the Civil Court is concerning any matter which is or has clearly been the subject of an application made under sections 105 to 108 of the Bengal Tenancy Act —*Sashi* v. *Esatar*, 19 C. W. N. 636=29 Ind.Cas. 122.

Section 109A.

Where upon an application by a landlord under section 105 clause (2) of tne Bengal Tenancy Act, a fair rent was settled by the Settlement Officer, but on appeal the special Judge dismissed the application: *Held*, that as the judgment of the special Judge is not a decision settling a rent so it does not fall within the purview of section 109A clause (3) of the Bengal Tenancy Act.—*Preobarat* v. *Murat*, 2 Ind. Cas. 263.

A decision fixing the area for which the tenant must pay rent, is not a decision settling a rent from which an appeal is

barred by section 109A of the Bengal Tenancy Act.—*Akbar* v. *Hira*, 16 C. L. J. 182=15 Ind. Cas. 332.

A decision by a special Judge that he had no jurisdiction as a revenue court to fix a fair rent in respect of lands held by the defendants, inasmuch as the latter were trespassers, and that the *zemindar's* only remedy was by the institution of a suit under section 157 of the Bengal Tenancy Act, is not a decision settling rent, and a second appeal from that decision is not barred by section 109A.—*Kali Prosanno* v. *Bhagaban*, 17 C. W. N. 348=17 Ind. Cas. 587.

Section 109B.

Section 109B which was inserted in 1907 contemplates an enquiry by the Revenue Officer into agreements adjusting disputes about enhancement and does not apply to a case where the agreement was made 15 years before the settlement proceedings.—*Bata Mandal* v. *Manindra*, 25 Ind. Cas. 829.

Section 111.

Section 111 of the Act merely prohibits suits or applications for alteration of the rent or the determination of the status of any tanant in the area to which the record-of-rights applies.—*Gangaram* v. *Sashi* 3 Ind. Cas. 100.

Where three months had already expired from the final publication of the record-of-rights, a suit should not be dismissed under section 111.—*Hira Koer* v. *Luchman Gope*, 21 Ind. Cas. 958.

In a suit for settlement of a fair and equitable rent of certain lands in the possession of tenants, it was contended by defendant, that the suit was for alteration of rent and was not maintainable having regard to section 111 of the Bengal Tenancy Act.—*Hira Koer* v. *Lachman*, 21 Ind. Cas. 958.

Section 111A.

Section 111A refers to suits in respect of orders directing the preparation of a record-of-rights under Chapter X. or in

respect of other matters for which there is a special procedure prescribed by the chapter.—*Ganga* v. *Sashi*, 3 Ind. Cas. 100.

A suit for declaration that an entry as regards the plaintiff's status in the record-of-rights describing him as a tenure-holder, is erroneous, and praying that he be declared to be an occupancy-*raiyat*, is not a suit within the purview of section 104 of the Bengal Tenancy Act, which must have reference to an entry of a rent settled in a settlement rent-roll or to the omission to settle such a rent, but falls within the category of suits alluded to in section 111A, a suit for a declaration of right under Chapter VI. of the Specific Relief Act, and the period of limitation for such a suit is six years.—*Promoda* v. *Asiruddin*, 15 C. W. N. 896.

Section 111A of the Bengal Tenancy Act provides that no suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights. Therefore, it does not debar the Civil Court from jurisdiction to determine that the order issued by the local Government under section 101, sub-section (*2*), clause (*b*) was *ultra vires* and illegal, because what is attacked in the suit is not the order itself, but the conditions under which it was issued.—*Secretary of State* v. *Pusendra Narain*, 40 C. 123=18 Ind. Cas. 939.

Section 111B.

Where a suit instituted within the prohibitive period, fails under section 111B. of the Bengal Tenancy Act, *see*—*Aratu* v. *Mani*, 20 Ind. Cas. 506.

Section 116.

When the plaintiff, a lessee, sought to eject the defendant, not on the ground that he was entitled to keep possession of *zerait* lands against the wishes of the proprietor, but on the ground that the defendant was a trespasser as he was not entitled to continue in occupation of those lands after the termination of his *ijara* lease: *Held*, that the true character of the lands would only be material if the defendant proved some kind of agricul-

tural tenancy right thereon, so as to make the provision of section 116 of the Bengal Tenancy Act applicable.—*Raghubir* v. *H. Manners*, 13 C. L. J. 568=11 Ind. Cas. 389.

Section 120.

Under section 120, sub-section (*2*) of the Bengal Tenancy Act, an admission by a tenant defendant in his previous deposition is admissible as "any other evidence."—*Akhju* v. *Jagannath*, 13 Ind. Cas. 1.

Sub-section (*3*) of section 120 of the Bengal Tenancy Act, read with sub-sections (*1*) and (*2*) lays down the test to determine the question whether a particular land is the proprietor's private land.—*Ganpat* v. *Rishal*, 20 C. W. N. 16.

Section 140.

Section 140 of the Bengal Tenancy Act does not afford the only remedy against a distraint made erroneously or on insufficient materials.—*Madhavanand* v. *Madhu*, 27 Ind. Cas. 812.

Section 144.

The provisions of the Bengal Tenancy Act applicable to suits for the recovery of arrears of rent apply, as far as may be, to a suit for the recovery of money payable in respect of forest rights.—*Bandi* v. *Ahmed*, 20 C. L. J. 227=19 C. W. N. 415=26 Ind. Cas. 380.

Section 148.

It is not possible to lay down any inflexible rule of universal application upon the question whether the precise area of the tenancy should or should not be determined in suit for rent. The only general principle which can be formulated is that where there is a substantial dispute as to the identity of the tenancy set up by the parties to the suit, the question in controversy must be decided.—*Ramdeo* v. *Maharani Bini*, 7 Ind. Cas. 379.

By the term "landlord's interest" in section 148 clause (*h*) of the Bengal Tenancy Act is meant the interest of the person

entitled to receive the rent from the tenant at the date of the application for the execution of the decree.—*Shambhu* v. *Sheo Prosad*, 17 C. W. N. 276=17 C. L. J. 227=18 Ind. Cas. 689 (F.B.).

There is nothing in section 148 (*h*) of the Bengal Tenancy Act to prevent the assignee from accepting the payment of the decree and certifying such payment to the execution Court.—*Rajani* v. *Rama Nath*, 27 Ind. Cas. 56=20 C. L. J. 200.

It is not competent to a landlord to choose arbitrarily some out of several representatives of the original tenant and to institute a suit for rent against such selected persons: *Held*, that the plaintiff should be made to comply with the requirements of clause (*b*) of section 148 of the Bengal Tenancy Act.—*Satyabhusan* v. *Monmotha*, 27 Ind. Cas. 313.

Section 148A.

A decree obtained by a co-sharer landlord for his share of the rent in a suit, not brought under section 148A or section 158A of the Bengal Tenancy Act, and in which the other co-sharers are not joined as parties, is a simple money-decree. Consequently the special limitation prescribed by Article 6 of Schedule III. of the Bengal Tenancy Act does not apply to the application for the execution of such a decree.—*K. B. Dutt* v. *Gostha*, 17 Ind. Cas. 207=16 C. W. N. 1006=16 C. L. J. 379.

The term "landlord" means a person immediately under whom a tenant holds, and the term "tenant" is defined to mean a person who holds land under another person and is or, but for a special contract, would be liable to pay rent for that land to that person, and a usufructuary mortgagee is consequently a person immediately under whom a tenant holds and is in the position of a landlord and is entitled to sue for rent in his character as such.—*Brohmanand* v. *Hem Chandra*, 18 C. W. N. 1016=23 Ind. Cas. 981.

Section 149.

In suit purporting to be under clause (*3*) of section 149 of the Bengal Tenancy Act, a decree for money was asked for and there was an issue whether the land in dispute appertained to the plaintiffs' or to the defendants' *talook: Held,* that the suit was not one exclusively under section 149, that the question of title was properly raised and decided, and that the onus was upon the plaintiff.—*Tirthabasi* v. *Purna,* 16 C. W. N. 558=15 C. L. J. 501.

In a suit for arrears of rent against a tenant, the money mentioned in sub-section (*3*) of section 149 of the Bengal Tenancy Act is the entire sum deposited into Court under sub-section (*1*) and no question of apportionment between rival claimants to proprietorship of the tenancy is intended to be raised or decided under the section.—*Ambica* v. *Aswini,* 21 C. L. J. 485=29 Ind. Cas. 883.

Section 153.

In a suit by a co-sharer landlord for his share of the rent, which was less than Rs 50 in amount, he made his co-sharers parties defendants, and prayed in the alternative that if it be found that separate collection is not proved, a decree may be passed for the whole amount. The lower appellate Court found that no case of separate collection was proved and dismissed the suit in *toto: Held,* that no second appeal lies.—*Sitalchandra* v. *Afiluddin,* 13 C. W. N. 793.

Where the suit is not only for rent by a co-sharer landlord, but a suit by one who seeks to establishing rights as a separated landlord, and that, therefore, is not a suit for recovery of rent within section 153 of the Bengal Tenancy Act and therefore an appeal is not barred under that section.—*Dapukdhari* v. *Baburam,* 10 C. L. J. 629.

Where the lower appellate Court gives a decree to the plaintiff in a suit for arrears of rent not at the rate admitted by the tenant, but at a less rate which is not the *jama* set

up by the defendant tenant, a second appeal lies to the High Court.—*Shib Nath* v. *Annoda*, 5 Ind. Cas. 340.

A suit in respect of the rent of a tank, where the lease is not only of the water but of the land underneath and of the fruits of trees on the banks of the tank and of the right to rear fish, is not one governed by the Bengal Tenancy Act, and the provisions of section 153 are not applicable to it so as to bar an appeal.—*Gourmohan* v. *Chandi*, 5 Ind. Cas. 158.

In a suit for rent below Rs. 100, the defence was that the land in suit appertained to another *jote* held by the defendant under the plaintiffs' superior landlord who was no party to the suit. The decree of the Lower Appellate Court did not decide the questions as to whether the plaintiff or the defendant was the *jotedar* under the superior landlord, but said that the plaintiff was entitled to recover so much money from the defendants in respect of the plaint land: *Held*, that a second appeal lay in the case.—*Sri Charan* v. *Mirejaullah*, 8 Ind. Cas. 824.

In a suit for rent the defendant No 1 was the tenant and the defendant no 2 was said to hold an intarmediate tenure which the plaintiff alleged he had annulled under sections 11 and 15 of the *Patni* Regulation The suit was dismissed by the Lower Appellate Court on the ground that the suit was not maintainable as the under-tenure holder had not been previously annulled by a suit. The plaintiff appealed to the High Court: *Held*, that it was a question such as is covered by section 153 of the Bengal Tenancy Act and that a second appeal lay.—*Krishna* v. *Parasulla*, 11 Ind. Cas. 85.

That the effect of the explanation newly added to section 153 of the Bengal Tenancy Act, is not to practically supersede the Full Bench case of *Kali Mondul* v. *Ram Sarbeswar*, 32 C. 957, although the effect of the explanation is to restrict considerably the effect of the Full Bench decision.—*Beni Madhab* v. *Bissesswar*, 15 Ind. Cas. 436.

Where rent suits were tried by a Munsiff who was invested with powers under section 159 (*b*) of the Bengal Tenancy Act and the amount claimed was less than Rs. 50: *Held*, that no appeal lay to the Sub-Judge.—*Sarat* v. *Ashraf*, 15 Ind. Cas. 669.

The expression "amount claimed in the suit" in section 153 of the Bengal Tenancy Act does not include costs and interests *pendente lite*.—*Sarat* v. *Keshab*, 16 Ind. Cas. 422.

Under section 153 of the Bengal Tenancy Act, in order to give a right of second appeal, it is only necessary that the decree to be appealed from should have decided the annual rate of rent whether directly or incidently. It is not necessary that there must be some contest upon the point.—*Nourjani* v. *Bimala*, 18 Ind. Cas. 87.

Where in a suit for recovery of rent for less than Rs. 100, a decree is passed on appeal *ex-parte*, and an application to re-hear the appeal is dismissed: *Held*, that no appeal lies to the High Court under Order 43 Rule 1 (*t*) of Civil Procedure Code as under the provisions of section 153 of the Bengal Tenancy Act the appeal is barred.—*Samed* v. *Naba*, 19 C. L. J. 310=23 Ind. Cas. 12.

Where in a suit for rent less than Rs. 100 the Court finding that the plaintiff had not proved his allegation as to rate of rent, gave a decree at the rate admitted by the defendant: *Held*, that there was a question as to rate of rent within the meaning of section 153 of the Bengal Tenancy Act and a second appeal lay.—*Tarui* v. *Umar*, 23 Ind. Cas. 416.

Where the plaintiff as lessee from third defendant, sued the other defendants, for rent and the contesting defendants contested the validity of the lease alleging themselves to be tenants of third defendant: *Held*, that a decision as to the validity of lease decides a question relating to title to land between parties having conflicting claims within the meaning of section 153 of the Bengal Tenancy Act and that a second

appeal lay to the High Court.—*Mahammad* v. *Samiruddin* 22 Ind. Cas. 383.

The burden of proving that it was incumbent on the plaintiff to have her name registered under the Land Registration Act before plaintiff was entitled to sue for arrears of rent, is on the defendant. Under section 153 the jurisdiction of a District Judge is revisional and not appellate.—*Suranjani* v. *Nekaruddi*, 23 Ind. Cas. 844.

A second appeal lies against an order refusing to set aside a sale held in execution of a decree obtained in a suit for rent for less than Rs. 100.—*Arjun* v. *Gunendra*, 27 Ind. Cas. 294 =18 C. W. N. 1266=20 C. L. J. 341.

Section 153, Explanation, applies only to cases where there is a question as to irregularity in publishing or conducting a sale.—*Nobin* v. *Bepin*, 19 C. W. N. 953=22 C. L. J. 244=21 Ind. Cas. 308.

Section 153 of the Bengal Tenancy Act provides for an appeal in cases where there is a decision on a question of the amount of rent annually payable by a tenant. These words do not occur in section 102 of Act VIII. of 1869; and therefore no second appeal lies in the case governed by section 102.

Where in a suit for rent under the Bengal Tenancy Act for an amount less than Rs. 50, the defendant set up the title in himself, but the suit was dismissed on the ground that no relation of landlord and tenant existed between the parties as no rent had ever been collected by the plaintiff: *Held*, that the decision was not appea lable.—*Gangadhar* v. *Shekhar*, 31 Ind. Cas. 812.

Where the plaintiff is a lessee and not a mere mortgagee and the defendant tenant claims to pay not to plaintiff, but to his lessor, there is a question of title between the parties and hence an appeal and a second appeal lie under the Bengal Tenancy Act, —*Mohammad* v. *Hiraman*, 24 Ind. Cas. 118.

Section 153A.

Although section 153A of the Bengal Tenancy Act does not specifically prescribe the mode of application of the money deposited by the person at whose instance the *ex-parte* decree has been set aside, the legislature clearly intended that the landlord, in whose favour a decree is ultimately made on the re-trial should apply the sum deposited by the judgment-debtor to his credit towards satisfaction of the decree and execute the decree for the balance left, if any.—*Sheo Parsan* v. *Bishen*, 15 C. W. N. 760=10 Ind. Cas. 539.

The words of section 193 of the Bengal Tenancy Act make the provisions of section 153A applicable to a suit for recovery of rent of a *jolkar*.—*Annoda* v. *Nil Madhab*, 11 Ind. Cas. 123.

Section 155.

The words "capable of remedy" in clause (*2*) of section 155 of the Bengal Tenancy Act mean "physically possible to remedy" and not a remedy by compensation—*Horak* v. *Kirat*, 10 C. L. J. 597.

The proviso to section 178 does not exclude the operation of section 155 of the Bengal Tenancy Act. Therefore, a landlord is not entitled to take possession of the premises by force or to sue and recover possession without fulfilment of the conditions prescribed by section 155, that is, without serving a notice under that section.—*Ohampaklatika* v. *Nafar*, 8 Ind. Cas. 44=13 C. L. J. 300=15 C. W. N. 536.

Section 157.

In a suit for possession after establishment of title or in the alternative for assessment of rent, the plaint, written statements and issues in the case showed that the suit was based on trespass and trespass only: *Held*, that the mere fact that there was an alternative claim for rent would not make any difference on the question of limitation, because that claim was based on section 157 of the Bengal Tenancy Act.—*Birendra* v. *Girish*, 30 Ind. Cas. 949=22 C. L. J. 154.

Section 158.

An application under section 158 of the Bengal Tenancy Act for determination of the incidents of a tenancy, cannot be made by or against a co-sharer landlord.—*Hori Mohan* v. *Sri Mohan*, 20 Ind. Cas. 820.

Section 159.

A share in a tenure which has been duly and effectively recognized by both the landlord and the tenants as a separated share, constitutes a distinct tenure; and when such a tenure is sold in execution of a decree for arrears of rent due in respect thereof the purchaser acquires the rights of a purchaser of an entire tenancy within the meaning of section 159 of the Bengal Tenancy Act.—*Somir* v. *Mohabharat*, 7 Ind. Cas. 909.

The word encumbrance as used in sections 159 and 161 of the Bengal Tenancy Act includes a statutory title and interest acquired by a trespasser by adverse possession of a part of the lands of the defaulting tenure Such encumbrance cannot be annulled in any manner other than what is provided in section 167 of the Bengal Tenancy Act.—*Gocool Bagdi* v. *Debendranath Sen*, 14 C. L. J. 136.

The word "incumbrance" as used in sections 159 and 161 of the Bengal Tenancy Act, includes a statutory title acquired by a trespasser by adverse possession of the land of a defaulting tenant.—*Arsad* v. *Munsab*, 14 Ind. Cas. 349.

To entitle an execution purchaser to annul encumbrances under section 159, Bengal Tenancy Act, the tenure must have been sold and that in execution of a decree for arrears due in respect of the tenure.—*Chandra* v. *Kenaram*, 19 C. L. J. 324.

Where the purchaser in a sale for arrears of rent of a *patni* sued for possesssion from the defendant who were found to have been in possession of the various plots of land even before the creation of the *patni*: *Held*, that the interest acquired by an

adverse possessor is an encumbrance within Article 121 of the Limitation Act.—*Kalikanund* v. *Biprodas*, 19 C. W. N. 18.

Section 160.

A tenure is not a protected interest within the meaning of section 160 of the Bengal Tenancy Act.—*Bhutnath* v. *Monmotha*, 13 C. W. N. 1025.

The burden is upon the purchaser to prove that the interest sought to be annulled is an incumbrance within the meaning of the clause (*a*) of section 161, and if he proves this, he starts his case sufficiently; the burden then shifts upon the tenant to prove that he has protected interest within the meaning of section 160.—*Somir* v. *Mohabharat*, 7 Ind. Cas. 919.

What words are sufficient to create a right of protected tenure-holders under section 106 of the Act are given. *See Akhil* v. *Surendra*, 11 C. L. J. 87.

The term plantations, in section 160, clause (*c*) of the Bengal Tenancy Act, is not governed by the expression "permanent," nor does the term necessarily mean permanency in the plaint though it implies permanency in the nature of the work.—*Banko* v. *Krishna*, 9 Ind. Cas. 528.

P granted a permanent lease to B which authorized B to grant sub-leases; B granted a permanent-lease to G who granted a sub-lease to the plaintiffs. In execution of a rent decree obtained by P, against B, the tenure of B was sold and purchased by the defendant: *Held*, that the right and interest of G. and, therefore, of the plaintiffs were protected interests within clause (*g*) of section 160 of the Bengal Tenancy Act and could not be interfered with by the purchaser defendant.—*Afazuddi* v. *Prasanna*. 39 C. 138=14 Ind. Cas. 991.

Where a *putnidar* mortgages his tenure and subsequently makes default in payment of his *putni* rent, and the *zemindar* sues the *putnidar* for the rent and obtains a decree in execution of which he himself purchases the *putni*, the mortgagee is not

entitled to enforce his security against the *zemindar*, but his only remedy is a personal decree against his mortgagor for his mortgage debt. Such a mortgage is not a protected interest within the meaning of section 160 clause (*g*) of the Bengal Tenancy Act.—*Kristo* v. *Jatindra*, 14 Ind. Cas. 145.

The extinction of a *durpatni* necessarily carries with it the extinction of a *se-patni* under it, which is not a protected tenure under the definition in section 160 of the Bengal Tenancy Act.—*Makhandas* v. *Ram Chandra*, 18 Ind. Cas. 372.

Section 160 of the Bengal Tenancy Act makes any right of occupancy a protected interest not liable to be annulled by a purchaser at a sale for arrears of rent *Debi Kant* v. *Ashutosh*, 20 Ind. Cas. 55.

The word "plantation" in section 160, clause (*c*) of the Bengal Tenancy Act, is one of wide significance and would include an assemblage of growing plants of any kind that have been planted and, therefore, would include a betel-leaf plantation—*Banko* v. *Krishan*, 18 C. L. J. 170=18 C. W. N. 349= 21 Ind. Cas. 419.

A general permission in writing contained in a *patta* to the *durpatnidar* to create *se-putni* protects a person letting a *se-patni* from the *durpatnidar* from liability to his *se-patni* being cancelled as a protected interest under section 160 (*g*) of the Bengal Tenancy Act.—*Bidhumukhi* v. *Asmatulla*, 23 Ind. Cas. 899.

Section 161.

Where the plaintiff sues to eject the defendants on the ground that their tenancy is an incumbrance created on the *gauti* tenure, which he has purchased in execution of a decree for arrears of rent, the *onus* is on the plaintiff to make a case that the tenancy is in fact, an incumbrance within the meaning of section 161 of the Bengal Tenancy Act.—*Normada* v. *Tarip*, 9 C. L. J. 490.

A lien created by a tenant on his holding is an incumbrance as defined in section 161 of the Bengal Tenancy Act.—*Chhaterdhari* v. *Biranchi Lal*, 9 Ind. Cas. 248.

A mortgage created by a tenant, is a lien on his tenure and is consequently an incumbrance within the meaning of section 161 of the Bengal Tenancy Act. If the mortgagee obtains a decree, his lien on the tenure does not cease, and his interest even after the decree continues to be an incumbrance.—*Joy Narain* v. *Badri*, 13 Ind. Cas. 144.

It rests upon an auction-purchaser in the first instance to show that the interest which he wishes to annul, is an incumbrance. But when that is established, the *onus* shifts on to the incumbrancer to prove that his incumbrance is saved through being a protected interest.—*Hari* v. *Moti*, 16 C. W. N. 779=15 Ind. Cas. 30.

An interest of an unregistered purchaser of a portion of a *putni* tenure is not an incumbrance within the meaning of section 161 of the Bengal Tenancy Act.—*Abdul* v. *Ahmadar*, 31 Ind. Cas. 554=19 C. W. N. 1217=22 C. L. J. 356.

Section 161A.

The word "sub-tenancy" in section 161A means a tenancy directly under the tenancy which has been purchased. It is not an incumbrance within the meaning of the section.—*Sarada* v. *Chaitanya*, 25 Ind. Cas. 741.

Section 162.

When a decree-holder makes an application under section 162 and obtains an order under section 163, of the Bengal Tenancy Act, there is an assertion by him that the property about to be sold at his instance is at least an occupancy holding. If a purchaser takes the property on the faith of this assertion, it is not open to the decree-holder subsequently to turn round and control that what had been sold is the interest of an under-*raiyat*. He is bound by his representation, and cannot be

permitted to resile from his statement, to the detriment of the purchaser—*Abdul* v. *Nekbar*, 16 Ind. Cas. 632.

Section 163.

The intention of the Legislature, as can be gathered from sections 163, 164 and 165 of the Bengal Tenancy Act, is to entitle a decree-holder, if he so desires, to proceed under section 165 in the event of the sale on the first notification not realising a sum sufficient to liquidate the amount of the decree and costs —*Salimulla* v. *Rahenuddi*, 30 Ind. Cas. 68=21 C. L. J. 659.

Section 163 provides that when the decree-holder makes the application for execution mentioned in section 162, the Court, if it admits the application and orders execution of the decree as applied for, shall issue simultaneously the order of attachment and the proclamation required by sections 66 and 70 of Order 21 of the Civil Procedure Code—*Ibid.*

Section 164.

If the bidding for a tenure put up to auction under section 164 of the Bengal Tenancy Act does not reach the level of the decretal amount, the sale cannot be held under that section. If the sale takes place on the first day of sale without issue of a second proclamation, the sale is not one under the Bengal Tenancy Act and only the right title and interest of the judgment-debtor will pass to the purchaser—*Banbahari* v. *Khetra Pal*, 38C-923=16 C. W. N. 259=13 Ind. Cas. 785.

Section 167.

Section 167 of the Bengal Tenancy Act provides that an application to the Collector should be to serve notice on the encumbrancer—*Khyanta* v. *Kedar*, 5 Ind. Cas. 652.

A notice under section 167 of the Bengal Tenancy Act will not be regarded as valid and legal notice, if it is shown that the Deputy Collector acted in excess of the powers conferred on him and not otherwise—*Girish Chandra* v. *Khagendra*, 13 C. L. J. 613=9 Ind. Cas. 1001=16 C. W. N. 64.

A lien created by a tenant on his holding is an incumbrance as defined in section 161 of the Bengal Tenancy Act. The purchaser of a holding at sale held in execution of a rent decree must, therefore, annul any mortgage created by the tenant as provided by section 167, and the mortgage is not *ipso facto* annulled by the sale—*Chhatardhari* v. *Biranchi*, 9 Ind. Cas. 248.

A person who claims to hold incumbrances and who disputed in a previous litigation the right of the purchaser of the holding at a rent sale, and thus denied the right of the purchaser of the holding at a rent sale, and thus denied the right of the purchaser to issue notices to annul the encumbrances, and caused the delay in issuing them, cannot in equity be allowed to say that the title under which the purchaser claimed to issue the notices was perfected on the date of the actual sale and not on the date of the confirmation of the sale—*Gobinda Chandra* v. *Tara Pada*, 9 Ind. Cas. 503.

That the landlord after his purchase in a rent decree could not oust the mortgagee purchaser without annulling the encumbrance under section 167 of the Bengal Tenancy Act, and that the mortgagee purchaser was entitled to fall back upon his mortgage lien to defend himself from the attack of the landlord—*Banbihari* v. *Khetra Pal*, 38 C. 923=16 C. W. N. 259.

In section 167 of the Bengal Tenancy Act, the words "date of sale" mean the actual date of the sale, and not the date of the confirmation of sale In the same section, the words "has notice" mean, has knowledge or information and not has received a notice—*Yusuf* v. *Asmatulla*, 16 C. L. J. 131=15 Ind. Cas. 430.

Where the *zemindar* in the execution-sale purchased a tenure but did not annul an under-tenure in the manner prescribed by section 167 of the Bengal Tenancy Act, which procedure it was obligatory on him to follow: *Held*, that the *zemin-*

dar did not acquire any valid title as against the under-tenure holder—*Murikya* v. *Ahmed*, 15 Ind. Cas. 479.

If the landlord elects to treat the defendant as a tenant the mere fact of his having served a notice under section 167 of the Bengal Tenancy Act, does not stand in the way of his suing the defendant for rent—*Rajkumar* v. *Alimuddi*, 16 Ind. Cas. 911.

The service of the notice through the Collector in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure was proper service in accordance with the requirements of the Bengal Tenancy Act of 1885, section 167—*Annada Gopal* v. *Nafor Chandra*, 18 C. W. N. 259=21 Ind. Cas. 928.

The words 'date of sale' in section 167 of the Act mean the date of confirmation of sale—*Banka* v. *Krishna*, 18 C. W. N. 849.

Some land comprised in a *putni talook* being sold for arrears free from encumbrances, under section 165 of the Bengal Tenancy Act, was purchased by plaintiffs who issued notices under section 167 for the annulment of the encumbrances held by the defendants which were found to be served in the manner prescribed for the service of a summons on a defendant under the Civil Procedure Code of 1882 which was then in force. In a suit brought by the plaintiffs for the possession of the lands sold: *Held*, by the Judicial Committee that either such a service or service by proclamation and beat of drum and by posting the notices in presence of not less than two persons on some conspicuous place in the village would be sufficient—*Ananda* v. *Nafor*, 18 C. W. N. 259=21 Ind. Cas. 928 (P. C.)

A sub-tenant is not entitled to a notice of ejectment under section 167 of the Bengal Tenancy Act, nor is an under-*raiyat* entitled to a notice under section 85 of the Act if he does not hold under a registered lease—*Saroda* v. *Chaitanya*, 25 Ind. Cas. 741.

The rights of a stranger who has purchased at a sale held in execution of a decree under Chapter XIV. of the Bengal Tenancy Act are regulated by the provisions of that Chapter which authorise the purchaser to annul all encumbrances—including sub tenancies mentioned in section 161 of the Act—*Janaki* v. *Prabhasini*, 30 Ind. Cas. 898.

Section 169.

Under section 169 of the Bengal Tenancy Act, the property passes into the hands of the purchaser free of all charges of arrears of rent and the landlord decree-holder is entitled to satisfy his claim for arrears of rent, which have accrued since the date of the institution, of the suit from the surplus sale proceeds—*Jadoo* v. *Asurni*, 16 C. L J. 98=16 Ind. Cas. 974.

The plaintiff, after selling a tenure in execution of a decree for rent, applied under section 169 of the Bengal Tenancy Act, to obtain from the surplus sale proceeds the rent due from the date of suit to confirmation of sale. The amount not being sufficient he now brought a suit for the balance—*Bijoy Chand* v. *Shashi*, 23 Ind. Cas. 101.

If the amount claimed by the landlord is any part of the arrears between the institution of the suit and the date of the confirmation of the sale, he is clearly entitled to it under clause (*c*) of section 169 of the Bengal Tenancy Act—*Narendra* v. *Nobin*, 28 Ind. Cas. 133.

Section 170.

A decree for arrears of rent due in respect of two holdings is not of such a nature as is contemplated by section 170 of the Bengal Tenancy Act.—*Bipra* v. *Rajaram*, 36 C. 765.

If on a previous occasion, the transferee of a tenure has been allowed to make a deposit under section 170 clause (*3*) of the Bengal Tenancy Act, the Court ought to allow him to make a deposit on a subsequent occasion.—*Jugul* v. *Sri Nath*, 7 Ind. Cas. 477.

Where a claimant contended that the property attached in execution of a rent-decree was neither a tenure nor a holding within the meaning of section 170 of the Bengal Tenancy Act but a piece of homestead land let out for building purposes to which the provisions of the Act have no application: *Held*, that the Court had jurisdiction to investigate the claim, as the claimant was in no way bound by the recital in the decree under execution to which he was not a party.—*Sorba* v. *Harendro*, 7 Ind. Cas. 490.

Certain co-sharer landlords in a suit for rent stated that they had not been able to obtain precise information as to what might be due to their co-sharer whom they made *pro-forma* defendant, but they had reason to believe that nothing was due to him and they consequently sued for what was due to themselves but they offered to increase the valuation of the suit if it should turn out in the end that rent was still due to their co-sharer. Neither the co-sharer nor the tenant entered appearance and an *ex-parte* decree was passed: *Held*, that as the co-sharer did not appear, the plaintiffs were entitled to proceed on the assumption that nothing was due to him, and the decree, therefore, was a decree for the whole sum then due to the entire body of landlords, and the plaintiffs were entitled to treat the decree as one for arrears of rent due in respect of the entire holding within the meaning of section 170 sub-section (*1*) of the Bengal Tenancy Act.—*Nanda* v. *Kala*, 8 Ind. Cas. 50.

A person, who has purchased a permanent tenure long prior to the institution of the suit in which a decree for rent was obtained by the landlord, is not entitled to make a deposit under section 170 (*3*) of the Bengal Tenancy Act.—*Rani Brindasuric* v. *Annoda*, 16 C. W. N. 94.

Section 170, Clause (*4*) of the Bengal Tenancy Act enacts that the withdrawal of money deposited under section 310A of the Civil Procedure Code, by a landlord, shall not operate as an admission of the transferability of the holding. But it does not relate to

procedure; it is a rule of evidence and cannot have any retrospective effect.—*Ahmed* v. *Roshan*, 9 Ind. Cas. 619.

The transferee of a non-transferable occupancy holding does not acquire any interest in the holding by his purchase, and has no right to make a deposit under section 170 (*3*) of the Bengal Tenancy Act to defeat the landlords' right to bring the holding to sale in execution of a rent-decree.—*Nalini* v. *Fulmoni*, 16 C. W. N. 421=15 C. L. J. 388.

In execution of a rent decree, the holding in arrear was advertised for sale. Thereupon A offered to deposit the decretal amount on the allegation that he had purchased the holding long ago, that he was in occupation since long before the decree, and that his purchase had been recognized by the landlord: *Held*, that A was not the judgment-debtor, for the decree was not made against him, nor had he an interest in the holding voidable on the sale within the meaning of section 170, Clause (*3*) of the Bengal Tenancy Act.—*Tarak* v. *Horish*, 16 C. L. J. 548.

It is an elementary principle of law that no order can be made so as to affect the interest of a party to the proceedings, till it has been afforded a reasonable opportunity of being heard in support of his case. This principle applies to cases under sub-section (*3*, of section 170 of the Bengal Tenancy Act—*Ram Nath* v. *Rudra*, 18 C. L. J. 142=21 Ind. Cas. 409.

Even if a holding is non-transferable, the transfer of only a portion thereof does not operate as a forfeiture of the tenancy. Therefore a mortgagee of such a portion has an interest in the holding voidable by the rent sale by the landlord within the meaning of section 170 (*3*) of Bengal Tenancy Act—*Satish Kanta* v. *Tufan*, 24 Ind. Cas 9.

A purchaser of an occupancy holding which is not transferable by custom or local usage is quite competent to make a deposit under section 170 (*3*) of the Bengal Tenancy Act, to prevent the landlord from selling the holding in execution of a decree

for arrears of rent, as his interest is such as is voidable on the sale—*Ahmadulla* v. *Horkaru*, 27 Ind. Cas. 176.

The purchaser of a *part* of an occupancy holding which is not transferable by local custom or usage is entitled to make a deposit under section 170 (*3*) of the Bengal Tenancy Act.—*Bhajra* v. *Melhir*, 27 Ind. Cas. 424.

An unregistered purchaser of a non-transferable occupancy-holding, even though his interest is voidable, is competent to deposit the decretal amount under section 170 (*3*) of the Bengal Tenancy Act when the landlord obtained a decree for arrears of rent against his registered tenant and advertised for sale the occupancy holding in arrear.—*Ahamadulla* v. *Prayag*, 20 C. W. N. 39; *See* also *Abdur Rahaman* v. *Promode Behary*, 20 C. W. N. 40.

Section 171.

Where a *patnidar* obtained a decree for rent against the recorded *durputnidar*, an unrecorded purchaser of a share of the *durputni* is entitled to deposit the decretal amount and obtain an order for delivery of possession under section 171 of the Bengal Tenancy Act without bringing a regular suit for the purpose, as his interest would be voidable upon a sale in execution of the decree.—*Radhika* v. *Rakhal*, 10 C. L. J. 473.

An under-tenure holder, who has saved a superior tenure from sale in execution of a decree for arrears of rent by a deposit under section 171 of the Bengal Tenancy Act, is competent to maintain an action for the recovery of the sum deposited by enforcing the charge created in his favour by that section, even, when the impending sale is likely to be brought about, partially, at any rate, by reason of his own default—*Hemanta* v. *Rajendra*, 13 C. L. J. 454=10 Ind. Cas. 270.

The interest of a co-tenant is void and not voidable on sale. Where, therefore, in order to save the holding, a co-sharer tenant paid up the amount due on a rent-decree from his co-tenants, he

acquired no lien on the share of his co-tenant.—*Ashutosh* v. *Abinash*, 15 C. W. N. 782.

Where a *se-putnidar*, after paying money to satisfy a rent decree obtained by a *putnidar* against the *dur-putnidar*, brought a suit for contribution praying for a personal decree and also for a declaration that the *dur-putni* tenure was liable to be sold for the money paid by him: *Held*, that the money paid was to be charged on the whole tenure and that the charge could not be shut up—*Beni Madhab* v. *Purna*, 14 C. L. J. 134.

The plaintiff, alleging himself to be the mortgagee, paid the amount of a rent decree against his mortgagor, the present defendant, to save the holding from sale. It was found in a case between the parties that the plaintiff had no valid mortgage against the defendant. The plaintiff then brought a suit to recover the amount he had deposited: *Held*, that the plaintiff had no interest voidable upon the sale and was, therefore not entitled to make any deposit under section 171 of the Bengal Tenancy Act.—*Horidas* v. *Panch Kowri*, 9 Ind. Cas. 615.

It is doubtful whether it is open to a *durputnidar* to seek the relief provided by section 171, sub-section (*1*) Clause (*b*) of the Bengal Tenancy Act, and if it was, whether the remedy was available after election by him of the remedy under section 13 Clause (*4*) of the *putni* Regulation.—*Ramjiban* v. *Tazuddin*, 15 C. W. N. 404=9 Ind. Cas. 489.

In passing an order under section 171 of the Bengal Tenancy Act, allowing a person to deposit the claim, without making any inquiry whatever into the question whether he has or has not any interest which is voidable on the sale, a Court acts with material irregularity in the exercise of its jurisdiction.—*Govinda* v. *Chandmeah*, 16 Ind. Cas. 202.

Deposit of *durpatnidar*.—*See*, 19 C. L. J. 525.

Whatever construction may be put on section 171 of the Bengal Tenancy Act, it cannot mean that the sum paid for the

protection of the property becomes part of the mortgage-money—*Monmotho* v. *Sarat*, 21 C. L. J. 429=29 Ind. Cas. 929.

Section 173.

An auction-purchaser has no right of second appeal against an order passed under section 173 of the Bengal Tenancy Act, setting aside a sale in execution of a rent-decree, on the ground that the auction-purchaser is the *benamdar* of the judgment-debtor.—*Chand Monee* v. *Santoo*, 1 Ind. Cas. 279.

No inflexible rule can be formulated that an order under section 173 is or is not appealable.—*Joytara* v. *Ram*, 7 Ind. Cas. 769.

It cannot be laid down generally that an order under section 173 of the Bengal Tenancy Act, is in no case appealable.—*Sreematty Joy Tara* v. *Pran Kristo*, 15 C. W. N. 512.

An appeal by an auction-purchaser, who is an outsider and not a party to the suit, against an order setting aside the sale on the application of a judgment-debtor under section 173 of the Bengal Tenancy Act, is incompetent.—*Jadab* v. *Joy Gopal*, 20 Ind. Cas. 191.

Application for setting aside rent sale.—Limitation—Starting point, 24 Ind. Cas. 366.

Where an order is passed setting aside a sale under section 173 of the Bengal Tenancy Act, no appeal lies therefrom by the auction purchaser, though fraud might have been alleged by the judgment-debtor.—*Jadab* v. *Joygopal*, 19 C. L. J. 81.

A purchaser of a portion of a non-transferable occupancy-holding sold in execution of a decree for rent is a representative of the judgment-debtor within the meaning of section 244 of the Civil Procedure Code of 1882, and therefore, the question whether the sale should be set aside on the application of the purchaser on the ground of fraud or under the provisions of section 173, Bengal Tenancy Act, is a question between the

parties to the suit or their representatives, and against the decision of such question there is both an appeal and a second appeal.—*Kali* v. *Gouri*, 27 Ind. Cas. 431.

Section 174.

It cannot be affirmed as a general proposition of law either that an order under section 174 of the Bengal Tenancy Act or under section 310A of the Code of Civil Procedure 1882 is or is not appealable.—*Sita Lal* v. *Nanda*, 1 Ind. Cas. 304.

A sale was held in execution of a rent-decree and the judgment-debtor made a deposit under section 174 of the Bengal Tenancy Act. Subsequently, the judgment-debtor made an application for leave to withdraw the deposit and thereupon the Court refused to set aside the sale. Then the present petitioner appeared and alleged that he had purchased the property long ago and that the deposit was made with his money. The Court dismissed his petition on the ground that he had no *locus standi: Held*, that, in the interest of justice, the petitioner ought to have been allowed to use the name of the judgment-debtor and to make a fresh deposit now within seven days from the arrival of the record in the Court below.—*Adhar Chandra* v. *Ram Charan*, 10 Ind. Cas. 526.

A sale held under Act VIII of 1865 (*B.C.*) read with section 105 of Act X. of 1859 in execution of a rent decree is liable to be set aside under section 174 of the Bengal Tenancy Act by depositing the decretal amount etc, as Chapter XIV. of this Act, which includes section 174, has been extended to the District where the sale took place.—*Baikal Parida* v. *Jogendra*, 11 Ind. Cas. 239.

A judgment-debtor's property was sold in execution of a rent decree on August 19th, 1910. On August 23rd he put in an application to have the sale set aside on the ground of material irregularity, and on that application notice was issued to the decree-holder and the auction-purchaser. On September

17th, the judgment-debtor put in an application under section 174 of the Bengal Tenancy Act, and the Court ordered him to make the deposit of the decree-holder's dues and the auction purchaser's damages, which were deposited. The case under rule 90 came up for hearing on September 24th, and on that date the judgment-debtor put in an application to withdraw from the prosecution of that case: *Held*, that the judgment-debtor was not entitled under the proviso of section 174 to make an application under section 174, and that the application could not be regarded as in itself tantamount to a withdrawal from the proceedings under Rule 90 so as to justify the setting aside of the sale on acceptance of the deposit.—*Mangal Mandal* v. *Bejoy Chand*, 11 Ind. Cas. 757.

It is not open to the Court to extend the time within which the judgment-debtor is required to make a deposit under section 174 of the Bengal Tenancy Act.—*Raghubar* v. *Jadu*, 15 C. L. J. 80=13 Ind. Cas. 365.

The expression "judgment-debtor" in sub-section (*1*) of section 174 of the Bengal Tenancy Act means the person against whom a decree has been made, in execution whereof the sale sought to be set aside has taken place.—*Abdul* v. *Monab*, 15 C. L. J. 170=14 Ind. Cas. 453.

An application under section 174 of the Bengal Tenancy Act to set aside the sale of a holding in execution of a rent decree, by deposit of the decretal amount, can be made by the judgment-debtor alone and by no other person.—*Ranjit Kumar* v. *Jogendra Nath*, 15 Ind. Cas. 561.

There is no provision in the Bengal Tenancy Act, which authorises the Court to extend the time of thirty days prescribed by section 174 within which a judgment-debtor may apply to have a sale of his holding in execution of a decree for arrears of rent set aside on his depositing the specified amount in Court.—*Radha* v. *Dinabandhu*, 20 Ind. Cas. 760.

Where the judgment-debtor deposits the amount in Court under section 174 of the Act, it is the duty of the Court to set aside the sale at once.—*Nityanand* v. *Uday*, 22 Ind. Cas. 885.

A deposit made under section 174 of the Bengal Tenancy Act must be made by the judgment-debtor himself and by no other person. A transferee of the judgment-debtor does not come under the section.—*Surendra* v. *Lachmi*, 29 Ind. Cas. 840.

Section 178.

Where land is originally let out for horticultural purposes the provisions of the Bengal Tenancy Act will apply in deciding the question of title to the land.—*Deb Narain* v. *Baidya Nath*, 2 Ind. Cas. 148.

The mere description of the land in the lease, that it is *zerait* land, is not sufficient to prevent the tenant from acquiring the right of occupancy, for there will be no estoppel under section 178 of the Bengal Tenancy Act.—*Ajodhya* v. *Ram Golam*, 13 C. W. N. 661.

A lease, which embodied a permanent settlement for agricultural purposes, contained a clause to the effect that if the lessor took up cultivation in future, that is after twelve years, then the lessee would have to give up the land: *Held*, that the clause was inconsistent with the interest created in the lessee, was bad for remoteness and because it contravened the provisions of section 178 of the Bengal Tenancy Act, as it tended to for the acquisition of a right of occupancy by the lessee.—*Banamali* v. *Ram Kinkor*, 15 Ind. Cas. 575.

Operation of section 178 (*1*) is controlled by section 194. *See* 20 C. L. J. 551=27 Ind. Cas. 397.

A contract between the landlord and the tenant after the passing of the Act but before its commencement providing for forfeiture even in the case of an attempt to transfer the

holding does not operate against the provisions of section 178, Clause 3 (*d*) of the Act.—*Satish* v. *Tufan*, 24 Ind. Cas. 9.

Section 179.

The original *putnidar* having died, his representatives, the present defendants, were called upon in 1903 by the *semindar* to execute a security bond, and they complied with the requisition agreeing to remain bound by the terms of the original *putni* lease: *Held*, that the execution of the security bond did not amount to a new lease, and that, therefore, section 179 of the Bengal Tenancy Act was of no assistance to the plaintiff.—*Ranjit* v. *Bahadur*, 9 Ind. Cas. 47.

Where a covenant is authorised by section 179 of the Bengal Tenancy Act, its validity cannot be impeached.—*Kkattermani* v. *Jiban* 28 Ind. Cas. 510=19 C. W. N. 546=21 C. L. J. 315.

Section 181.

If a tenant undertake to render service as the consideration for his tenancy, the service is to be treated as in the nature of rent; and a suit for damages for non-performance of the service is one for rent of land, and a Small Cause Court has no jurisdiction to entertain it.—*Panchu* v. *Nogendro*, 8 Ind. Cas. 96=12 C. L. J. 480.

Section 182.

A *raiyat* purchased two parcels of land from the respective *raiyats* to whose homesteads they originally belonged; since then he cultivated them and paid rent to the landlord, who subsequently sued to eject him: *Held*, that the parcels, whatever they had been once, were now agricultural lands held by the *raiyat*, and that the Bengal Tenancy Act applied to them.—*Jotindra* v. *Kedar Nath*, 13 Ind. Cas. 289.

The plaintiff was a *raiyat* and his holding consisted partly of agricultural and partly of homestead land. He let out the homestead portion to the defendants who held certain lands

as *raiyats* not under the same landlord but under a different landlord and in a different village contiguous to the homestead land: *Held*, that section 182 of the Bengal Tenancy Act applied, and that the provisions of the Act applicable to a *raiyat* would regulate the incidents of the tenancy of the homestead, though the defendants had only the interest of an under-*raiyat* with respect to it.—*Krishna* v. *Jadu*, 28 Ind. Cas. 839=21 C. L. J. 475.

In order to make section 182 of the Bengal Tenancy Act applicable, it is not essential that the homestead should be in the same village or be held under the same landlord as the holding of the *raiyat*.—*Dina* v. *Sashi*, 31 Ind. Cas. 16=22 C. L. J. 219.

Section 186A.

Section 186A of the Bengal Tenancy Act does not apply to a case brought by a landlord in a Civil Court for possession when the tenants thereof have successfully denied the landlords' title in a rent suit.—*Prosonno* v. *Kulada*, 29 Ind Cas. 472.

Section 188.

The institution of a suit for enhancement of rent is a thing authorized by the Bengal Tenancy Act in the case of tenure-holders as well as in the case of occupancy-*raiyats*. The Act prohibits one or some of two or more joint landlords from suing to enhance the rent unless both or all of the fractional landlords join in the suit as co-plaintiffs. Therefore, a suit for enhancement of rent brought by one of the joint landlords making the other landlords, who do not concur with him, defendants will not lie—*Jatindra* v. *Prasanna*, 25 C. W. N. 77 =13 C. L. J. 51=8 Ind. Cas. 842 (P. C.)

Where the co sharers continue to be joint owners but cease to be joint landlords, section 188 of the Bengal Tenancy Act is inapplicable—*Imdad* v. *Danesh*, 14 Ind. Cas. 738.

Joint landlords—Suit by one of the defendants—Oral authority to Agent.—*See* 24 Ind. Cas. 266.

Where a co-sharer landlord brought a suit for arrears of rent and also for additional rent on the basis of a *kabuliyat* executed by the tenant in favour of the entire body of landlords agreeing to pay additional rent for additional areas, and made his co-sharers parties to the suit: *Held*, that the suit for additional rent was not maintainable, as it was not brought by all the landlords jointly under section 188 of the Bengal Tenancy Act—*Dwarka* v. *Mathur*, 18 C. W. N. 942.

Section 188 of the Bengal Tenancy Act has no reference to joint tenants and does not prevent a co-sharer tenant from bringing a suit authorized by the Act unless his other co-sharers join him as plaintiffs—*Khetterman* v. *Jiban*, 18 Ind. Cas. 510=19 C. W. N. 546=21 C. L. J. 315.

Section 193.

The right over fishery in section 193 of the Bengal Tenancy Act is the right to rear and to catch fish without any reference to or connection with the land underneath or bordering on the water—*Gour Mohan* v. *Chandi*, 5 Ind. Cas. 158.

The words of section 193 of the Bengal Tenancy Act make the provisions of section 153A applicable to a suit for recovery of rent of a *jalkar*—*Annoda* v. *Nilmadhab*, 11 Ind. Cas. 123.

Section 195.

The *Patni* Regulation provides rules for the alienation of the whole or a part of a *patni talook*, and these rules cannot be affected by anything in the Bengal Tenancy Act, by force of section 195 (*e*) of that Act—*Azimoodin* v. *Mathura*, 18 Ind. Cas. 712.

Section 195, Clause (*e*) of the Bengal Tenancy Act makes it clear that nothing contained in the Act can affect the provisions of *patni* Regulation VIII. of 1859, for the sale of the whole or a part of the *patni*. So if a sale is not recorded in the

zemindar's sherista, he is not bound to recognise the same. A registration of a transfer or a *patni*, in whole or in part under section 12 of the Bengal Tenancy Act, does not confer on the transferee any right to the same—*Shaizuddin* v. *Mathura*, 18 C. W. N. 338.

Whether section 195 *(e)* excludes applicability of section 65 of the Act to Bengal *patni* tenures—*See* 20 C. L. J. 1.

Section 196.

Section 196 of the Bengal Tenancy Act, 1885, applies only where both that Act and the Act of 1907 which amended it governed the proceedings, as in the case of a suit instituted after 1907 in which case the law to be administered would be the Bengal Tenancy Act as modified by Act of 1907—*Kumar Kalanand* v. *Dhekh*, 9 Ind. Cas. 805.

Schedule III. Art. 1.

Where the suit has been brought by the plaintiff to recover possession from defendant as a trespasser who is in possession of the lands in suit without any title, the provisions of the Bengal Tenancy Act have no application to the suit is not barred by Article 1 of Schedule III of the Bengal Tenancy Act —*Prodyot* v. *Mahomed*, 7 Ind. Cas. 86.

When a tenant is dispossessed of his land by another tenant, and the landlord has a hand in the ouster, the special limitation laid down in Schedule III of the Bengal Tenancy Act applies to a suit for recovery of possession—*Natabar* v. *Rudra*, 9 Ind. Cas. 625.

Suit to eject a non-occupany-*raiyat*—Limitation—*See* 22 Ind. Cas. 67.

Schedule III. Article 2.

A suit by the assignee to recover arrears of rent does not fall under Article 2 (*b*) of Schedule III. of the Bengal Tenancy Act—*Ahmedulla* v. *Kaminuddin*, 2 Ind. Cas. 989.

Where a registered lease expired in 1311 B. S. and a suit for rent was brought in 1313: *Held*, that the suit was governed by the limitation as prescribed by Schedule III., Article 2 (*b*) of the Bengal Tenancy Act, inasmuch as the plaintiff sued as a landlord—*Kamala* v. *Jhunti*, 3 Ind. Cas. 114.

The question whether a suit for the recovery of the arrears of rent is a suit brought by the landlord within the meaning of Article 2 (*b*), Schedule III of the Bengal Tenancy Act, ought to be determined with reference to the relation in which the parties stood when the right to sue is accrued, that is when the arrears of rent claimed fell due—*Balmukund* v. *Tarini*, 17 Ind. Cas. 343=16 C. L. J. 360..

Article 2 (e.)

The plaintiff purchased a tenure in 1312 B. S. with the arrears of rent for 1311, and brought a suit for arrears of rent for 1311: *Held*, that the suit was one for arrears of rent and governed, as to limitation, by Clause (*e*) of Article 2 of Part I., Schedule III. of the Bengal Tenancy Act—*Banga* v. *Nabindra*, 11 Ind. Cas. 496.

The Bengal Tenancy Act does not apply to leases of agricultural land which are not for agricultural purposes—*Rash Behari* v. *Tilukdhari*, 21 Ind. Cas. 797.

Schedule III. Article 3.

In order to determine whether a case is governed by the general limitation or special limitation as provided by Article 3 Schedule III. of the Bengal Tenancy Act the nature of the tenancy must be ascertained.—*Iswara Chandra* v. *Taranath*, 1 Ind. Cas. 807.

Where the dispossession takes place by the auction purchaser at the instigation of the landlord, in that case this article is applicable.—*Aminuddin* v. *Ulfutunissa*, 13 C. W. N. 108.

In order to bind the tenant by a shorter period of limitation of two years under article 3 of Schedule II. of the

Bengal Tenancy Act, it must be strictly shown that the ouster is an ouster by the landlord and known to the tenant as such.—*Arman* v. *Krishna*, 5 Ind. Cas. 383.

When the whole body of landlords obtain a proper rent-decree and purchase the holding in execution and dispossess the tenant, the special law of limitation contained in Article 3 of Schedule III. of the Bengal Tenancy Act applies.—*Satis Chandra* v. *Putu*, 10 Ind. Cas. 54.

The principle of the section 28 of the Limitation Act was applicable to cases governed by Article 3 of Schedule III. of the Bengal Tenancy Act.—*Nandkumar* v. *Ajodhya*, 11 Ind. Cas. 465.

Section 61, Clause (*3*) of the Eastern Bengal and Assam Tenancy Amendment Act of 1908 has no retrospective operation.—*Manjuri* v. *Akkel*, 17 C. L. J. 316=17 C. W. N. 889=19 Ind. Cas. 793.

The period of limitation applicable to a suit for declaration of the the plaintiffs' *raiyate* right in the disputed land and for *khas* possession of it, after setting aside an *ex-parte* decree as being fraudulent and illegal, is that prescribed by Article 95 of the Limitation Act and not that prescribed by Article 3 of Schedule III. of the Bengal Tenancy Act.—*Meher* v. *Rahaman*, 19 Ind. Cas. 980.

The special limitation provided in Article 3, Schedule III. of the Bengal Tenancy Act does not apply to the case of an occupancy-*raiyat* who is dispossessed from his holding by his landlord, not acting as landlord but in his character or capacity of auction-purchaser.—*Kawal* v. *Rameswar*, 17 C. W. N. 817=19 Ind. Cas. 545.

It cannot be said that because the landlord has favoured the dispossession of a tenant by others there has been a dispossession by the landlord so as to bring into play Article 3 in the Schedule to the Bengal Tenancy Act.—*Basanta* v.

Nanda, 18 C. L. J. 86=17 C. W. N. 1149=20 Ind. Cas. 350.

Article 3 as amended by Act I. of 1907 (B. C.) if applicable where dispossession took place before amending Act.—*See* 20 Ind. Cas. 821.

Where a landlord assisted the defendant in dispossessing a tenant, the plaintiff: *Held*, that the special limitation of two years as provided by Schedule III. Article 3, of the Bengal Tenancy Act was applicable to the suit.—*Denonath* v. *Kotiswar* 21 Ind. Cas. 367.

Article 3 of Schedule III. of the Bengal Tenancy Act deprives the plaintiff of his right to come to Court, after the lapse of certain time, for the purpose of vindicating a claim which is his, and, therefore, it must be clearly made out that any particular case falls within its terms, which should not be extended by use of figures of speech and metaphors.—*Rudra Narain* v. *Natabar*, 18 C. L. J. 89=18 C. W. N. 353=41 C. 52=21 Ind. Cas. 431.

The plaintiff who had been dispossessed by his landlord in July 1903 sued in July 1909 for declaration of his title to, and possession of, the land demised: *Held*, that the suit was not barred by the special limitation of two years prescribed by Article 3, Schedule III. of the Bengal Tenancy Act and made applicable to all classes of *raiyats* by section 61 (*3*) of the Bengal Tenancy Amendment Act I. (B. C.) of 1907 which was passed and came into operation on 11th May 1907.—*Gopeshwar* v. *Jiban*, 24 Ind. Cas. 37=18 C. W. N. 804.

Dispossession in the Article means dispossession by the landlord as such and not when he is misled by his agent in collusion with a purchaser—*Rudra* v. *Natobar*, 41 Cal. 52=18 C. W. N. 353.

Where a landlord purchased a holding at a rent sale in the name of a former tenant and took forcible possession thereof

without delivery of possession by the Civil Court, thereby ousting the present tenant: *Held*, that Article 3 Schedule III. of the Bengal Tenancy Act applied and that there was no distinction between the case where the land is purchased in his own name and in the name of a new tenant—*Pitambar* v. *Bhagabat*, 24 Ind. Cas. 860.

Schedule III. Artical 6.

Article 6 of Schedule III. of the Bengal Tenancy Act, as amended by Act I. (B.C.) of 1907, is not limited in application to decrees in suits commenced after the amendment came into force.—*Thakomoni* v. *Mohendra*, 10 C. L. J. 463.

Where the decree is one for rent and below Rs. 500, no second period of limitation is allowed under Article 6, Schedule III. Bengal Tenancy Act.—*Kalanand* v. *Chandra Kishore*, 7 Ind. Cas. 19.

An order of the Appellate Court, ordering the respondent to pay a portion of the Appellants' costs which had been awarded against the latter in the Court below, made in a suit for rent between the landlord and tenant, falls directly within the purview of Articles 6 of Part III. of Schedule III. of the Bengal Tenancy Act.—*Rajkumar* v. *Annoda*, 9 Ind. Cas. 246.

On the April 26th, 1907, a consent decree in a rent suit for the amount claimed payable in five instalments, was made, the last instalment to be paid in January 1911. The judgment-debtor paid the amount of the first three instalments, and on April 6, 1911, the decree-holder applied for execution in respect of the blance: *Held*, that the application was barred by limitation under Article 6 of Schedule III of the Bengal Tenancy Act as the decree was one made under that Act, and the parties were not at liberty to contract themselves out of the law of limitation and extend the period prescribed thereby.—*Khetra* v. *Mohim*, 18 Ind. Cas. 595.

A decree obtained by one of several joint landlords for his share of the entire rent and made in a suit in which rent was

claimed in respect of several holdings in the occupation of the tenant, is a decree for rent within the meaning of Article 6 of Schedule III. of the Bengal Tenancy Act.—*Mrityunjay* v. *Bhola Nath*, 18 C. L. J. 18=20 Ind. Cas. 833.

A decree for which the limitation is prescribed by Article 6 of the Bengal Tenancy Act, is one which is capable of execution.—*Mahamaya* v. *Abdul*, 21 Ind. Cas. 615.

After the Act of 1907 was passed, execution was taken out by the decree-holder in 1910 within three years of the date of the previous application for execution: *Held*, that the last application was governed by Article 6 of Schedule III. of the Bengal Tenancy Act as amended by section 61 of the Act of 1907.—*Narendra* v. *Upendra*, 21 Ind. Cas. 113.

A suit instituted after the amendment of Article 6 of Schedule III. of the Bengal Tenancy Act, is governed by the Article as amended, even when the cause of action arose before the amendment.—*Barhanuddi* v. *Lal Khan*, 21 Ind. Cas. 43.

Where a decree for rent did not specify the relief granted and so was incapable of execution and the same was subsequently amended by order of Court, on an application for execution presented more than 3 years after the date of decree, but within 3 years of the amendment: *Held*, that Article 6 of Schedule III. of the Bengal Tenancy Act (which provides 3 years for an application for execution of a decree for rent) does not apply to this case.—*Mahamaya* v. *Ardul*, 18 C. W. N. 266.

The holder of a decree for rent applied on the 13th February 1907 for execution by attachment and sale of lands and on 6th May 1907 the judgment-debtors took time to satisfy the decree. Meanwhile, they had instituted a suit to set aside the decree for fraud, etc., and by an injunction therein issued on 27th June, the execution of the decree was arrested and the execution case was dismissed, attachment subsisting. This

injunction was dissolved on 8th May, 1908 and on 7th October, 1909 the decree holder made a second application for attachment and sale of moveables in which the question of limitation was decided in favour of the decree holder but the application itself was dismissed for default and want of further prosecution. On the 4th July 1910, a third application was made for execution by attachment and sale of the same lands as before mentioned in the first application: *Held*, that the application was not barred by limitation under Article 6 Schedule III. of the Bengal Tenancy Act.—*Sarandhari* v. *Biram*, 18 C. W. N. 539.

The special limitation provided by Article 6 of Schedule III. of the Bengal Tenancy Act, as amended by Act I. of 1908, Eastern Bengal and Assam Tenancy Act governs an application for execution of a decree obtained by a co-sharer landlord for his share of the rent in a suit to which the other co-sharers were not parties, the decree being for a sum of money not exceeding Rs. 500—*Narendra* v. *Afifunnissa*, 27 Ind. Cas. 729.

An application for execution of a decree obtained by a co-sharer landlord for his share of the rent without making the other co-sharers parties, is governed by Article 6 of Schedule III. of the Bengal Tenancy Act—*Byomkesh* v. *Haladhar*, 31 Ind. Cas. 700=19 C. W. N. 1271.

REVENUE DEPARTMENT.

NOTIFICATIONS.

No. 11574 L.R.—The 7th December 1914.—In exercise of the powers conferred by sub-section (7) of section 39, sub-section (2) of section 61, section 134 and section 189 of the Bengal Tenancy Act 1885 (VIII of 1885), the Governor in Council is pleased to make the following rules for all the districts of the Presidency of Bengal, to which the said Act applies, in supersession of all rules heretofore made under the said portions of that Act by the Government of Bengal and the late Government of Eastern Bengal and Assam.

J. H. KERR,
Secy. to the Govt. of Bengal.

Rules under the Bengal Tenacy Act, 1885 (VIII of 1885).

CHAPTER I.

GENERAL.

Supervision and control by Local Government.

1. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under the Bengal Tenancy Act, 1885 (hereinafter referred to in these rules as "the Act").* shall be subject to the supervision and control of the Local Government; and the proceedings and orders of each Revenue-officer under the Act shall be subject to the supervision and control of the Revenue-Officers to whom he may be declared by the Local Government to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

* Act VIII of 1885.

Service of notice where mode not prescribed by the Act or these rules.

2. Where no other mode of service of notice is prescribed by the Act or by these rules, service shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure; and if it is addressed to a number of persons occupying or owning different holdings or tenures in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, *or* by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village.

CHAPTER II.

Staple Food-crops and Price-lists.

Local areas.

3. *Section 39.*—Each Sub-division of a District shall form a local area for the purposes of sub-section (*1*) of section 39 of the Act, and the Collector shall settle the mart within the Sub division at which prices shall be recorded.

Staple food-crops.

4. Rice has been declared, and until further orders shall be deemed, to be the staple food-crop in all such local areas.

Dates for preparation of price-lists.

5. Price-lists of the staple food-crop shall be prepared on one market-day in the month, at intervals of not less than twenty days. This market-day shall be selected by the Collector, subject to the control of the Board of Revenue.

Method of determining prices.

6. The price recorded shall be the prevailing retail price at which the staple food-crop was actually sold in the mart to which the price-list refers, on the day selected under rule 5.

Price-lists by whom to be prepared.

7. (*1*) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases, where a Sub-Deputy

Collector is not available, the Collector may authorise a kanungo to prepare the lists.

(2) Where prices are recorded at marts other than those at the head-quarters of districts, the Collector may, with the sanction of the Commissioner, authorise a Sub-Registrar to prepare the list, on days when no gazetted officer or kanungo is available.

(3) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-lists, and the list shall be signed by at least one of them, as well as by the officer preparing it.

Record to be kept by officer preparing price-lists.

8. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(a) the date of his visit to the mart at which prices are to be recorded;

(b) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

Scrutiny and countersignature of price-lists prepared by subordinate officer.

9. When price-lists are prepared at the Sadar Sub-division by an officer other than a Covenanted Deputy Collector, or at other Sub-divisions by an officer subordinate to the Sub-divisional Officer or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Sub-divisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanations and cause errors to be corrected, and, having satisfied himself of the accuracy of the lists, he shall countersign them.

Publication of price-lists.

10. The price-lists shall be published at the marts to which they respectively refer, at the Collectorate or sub-divisional office, and at every police-station and munsifi in the local area.

Submission of price-lists to Board.

11. After the expiry of one month from the date of publication in the manner prescribed in rule 10, the price-lists shall be submitted to the Board of Revenue with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections.

CHAPTER III.

LANDLORD'S IMPROVEMENTS.

Application for registration of improvement to whom to be presented.

12 *Section 80.*—Applications from landlords for the registration of improvements shall be made to the Collector of the district. If any such application be presented to any other Revenue-officer, he shall forward it for orders to the Collector.

Verification by local inquiry.

13. As far as practicable, the application shall be in Form I appended to these rules. The Collector shall either verify the application personally or shall depute a Revenue-officer, not below the rank of Sub-Deputy Collector, to make the verification. In all cases the verification shall be by local inquiry.

Publication of local inquiry.

14. Before holding a local inquiry under rule 13, the Revenue-officer shall prepare a proclamation, giving general notice to the tenants of every village concerned of his proposed local inquiry and of the date thereof. He shall cause such proclamation to be published by beat of drum in every such village and he shall cause a copy of the proclamation, together with a copy of the landlord's application, to be fixed up, in the presence of not less than two persons, in some conspicuous place of every such village. The expense of such publication shall be borne by the applicant for registration.

Record of local inquiry.

15. The Revenue-officer who makes a local inquiry under rule 13 shall ascertain whether the work in question was carried out and, if so, at what time, at whose expense, and at what cost; whether the work is an improvement as defined in section 76, sub-section (*2*), of the Act, and was lawfully made by the landlord, and, if the improvement comes under clause (*e*) of that sub-section, whether enhanced rent is already being paid for the original improvement; and what tenants have been benefited thereby and to what extent. The Revenue-officer shall embody in a proceeding the result of his local inquiry. When an officer other than the Collector has made the local inquiry, he shall submit the proceeding to the Collector.

16. The Collector, after considering the proceeding of the local inquiry and after holding such further inquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement; and if he directs registration, he shall record clearly whether it falls under clause (*e*) of section 76 (*2*) of the Act, and, if so, what enhancement of rent, if any, is being paid for the original improvement.

Orders by Collector on local inquiry.

17. *Section 81 (1).*—Every Revenue-officer who records evidence under section 81 (*1*) of the Act shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII. of the Code of Civil Procedure (Act V of 1908).

Powers of officer recording evidence as to improvement.

CHAPTER IV.

Record of Proprietor's private lands.

18. *Section 118.*—Applications under section 118 of the Act shall be made to the Collector of the district. If any such applications be presented to any other Revenue-officer, he shall forward it for orders to the Collector.

Application for record of proprietor's private land to whom to be made.

19. The application shall be signed by the party making it, and shall contain the following particulars, so far as the applicant is able to furnish them:—

Signature of, and particulars to be contained in, application.

(*a*) the name, tauzi number, and Government revenue of the estate;

(*b*) the names of the registered proprietors, and the share held by each;

(*c*) the specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known;

(*d*) the names of the tenants (if any) in occupation of each such plot; and

(*e*) the grounds of the application.

20. On receipt of the application, the Collector shall make such inquiry as he may think fit by examing the applicant or his agent, and may call for further particulars before ordering further proceedings. If the Collector directs that further proceedings be taken, he may transfer the application for inquiry and report to any Revenue-officer subordinate to him.

Inquiry on receipt of application.

21. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the Collector shall order that the lands be measured and shall estimate the cost of measurement, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

Measurement of lands, where necessary, and deposit of cost thereof.

22. If the Collector determines that the land or any portion thereof is proprietor's private land within the meaning of section 120 of the Act, he shall record a proceeding to that effect and shall attach thereto a map of the land as ascertained by measurement.

Record of proceeding.

23. Rules 41—48 relating to Revenue-officers acting under Chapter X of the Act, shall apply *mutatis mutandis* in the case of Revenue-officers acting under Chapter XI. of the Act.

Rules 41 to 48 to apply to officers acting under Chapter XI of the Act.

CHAPTER V.

Service of Notices.

24. Notices under sections 12, 13, 15 and 18 of the Act shall contain, so far as may be possible, the particulars given in the appended forms (Forms 2 to 7.)

Contents of notices under sections 12, 13, 15, 18.

25. (*1*) Where there is a sole landlord, or where two or more persons are joint-landlords, and have a common agent such as is referred to in section 188, or a common manager appointed under section 95 of the Act, the notices specified in rule 24 shall be served on such sole landlord or his agent, or on such common agent or manager, as the case may be,

Manner of service.

(2) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

Posting of notice.

26. (1) In each case under rule 25, the notice shall be forwarded by post, in a letter registered under Chapter VI. of the Indian Post Office Act, 1898 (VI. of 1898), and an acknowledgment obtained.

(2) For the service of every such notice a process-fee of eight annas shall be levied, provided that where this fee is insufficient to cover the postal charges and the cost of obtaining an acknowledgment, a fee equal to the actual cost incurred shall be levied.

Transmission of landlord's fee by money-order.

27. In the cases mentioned in rule 25 (1) the landlord's fee shall be transmitted by money-order to the sole landlord or his agent, or to the common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain in every case the number and date of the notice served under section 12, 13, 15 or 18 of the Act, and shall contain, in addition, so far as may be possible, the particulars given in the appended forms (Forms Nos. 2 to 7).

Deposit of fee, where there is refusal or no application.

28. If, in cases where the amount of landlord's fee is transmitted by money-order, the sole landlord or his agent, or the common agent or manager, refuses to accept payment thereof, and in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and on the expiry of that time the Collector of the district may declare that it has been forfeited, and, on such declaration being made, it shall be at the disposal of Government.

Verification of payment.

29. The Collector, or any other officer who signs the order for the notice to be served, shall satisfy himself that the landlord's fee and other fees and charges realised in cash have been paid into the treasury.

30. The agreement under sub-section (*2*) of section 46 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the *raiyat* in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

Filing and service of agreements under section 46 (*2*).

31. The notice under sub-section (*4*) of section 46 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

Filing and service of notice under section 46(*4*).

32. In cases (*a*), (*b*) and (*d*) of section 61, referred to in sub-section (*2*) of section 63 of the Act, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

Service of notice of receipt of deposit in cases (*a*), (*b*) and (*d*) of section 61.

33. The general notice referred to in sub-section (*2*) of section 72 of the Act may be published by the transferee by fixing up a written notice to the tenants in the village office, or, in the presence of not less than two persons, in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice, as hereinbefore prescribed, on payment of the process-fee prescribed by the High Court.

Publication of general notice under section 72 (*2*).

34. Notice under section 73 of the Act shall be in writing and shall be delivered to the landlord or his agent or, where two or more persons are joint land-

Notice under section 73.

lords, to their common agent referred to in section 188, or to their common manager appointed under section 95 of the Act, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (*2*) of section 54 of the Act. When there are two or more joint landlords without a common agent or manager, the notice shall be served at the village office of the principal co-sharer, or at such other places as may be appointed by each of the landlords for payment of rent under sub-section (*2*) of section 54.

[Service] of such notice through Civil Court.

35. The *raiyat* may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

Notice by *raiyat* of intention to surrender.

36. If the *raiyat* elects to proceed under sub-section (*2*) of section 86 of the Act, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under sub-section (*4*) of the said section, the notice of the *raiyat's* intention to surrender shall be served on the landlord in the manner prescyibed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

Notice by tenant of intention to abandon.

37. A notice of the tenant's abandonment of his holding under sub-section (*2*) of section 87 of the Act shall be in the appended form (Form 8), and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling-house, or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

Notice to tenant under section 155.

38. Notice to the tenant under section 155 of the Act shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of

a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

Service of notice of incumbrances on landlord.

39. (*1*) When a tenancy is held under a single landlord, or under two or more landlords having one common agent or common manager, such as is referred to in rule 25 (*1*), a copy of the instrument referred to in section 176 of the Act shall be served on such landlord or on such agent or manager as the case may be.

(*2*) When a tenancy is held under two or more landlords not having one common agent or common manager as aforesaid, a copy of the said instrument shall be served—

(*a*) if none of them have one common agent or common manager as aforesaid, then on each landlord, or

(*b*) if some of them have one common agent or common manager as aforesaid, then on such agent or manager and also on each of the landlords who have no such agent or manager.

(*3*) The said copy or copies shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure (Act V. of 1908).

(*4*) The fee to be paid for such service shall be—

(*i*) in the cases referred to in sub-rule (*1*), one rupee; and

(*ii*) in the cases referred to in sub-rule (*2*), one rupee for the first copy of the instrument and four annas for each additional copy.

Particulars to be contained in requisition from Civil Court for copies or extract of record of-rights.

40. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the appended form (Form 9). The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose.

CHAPTER VI.

PART I.

Powers of officers making surveys and preparing records-of-rights.

41. When a Revenue-officer is appointed for the purpose of making surveys and preparing records-of-rights under Chapter X. of the Act within any district, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." Every such officer is hereby vested with—

Powers vested in Settlement and Assistant Settlement Officers.

(*a*) all the powers exercisable by a Civil Court in the matter of procuring the attendance of parties and witnesses and the production of documents and of examining the same;

(*b*) powers to enter upon any land included within the area, in respect of which the order under section 101 of the Act has been made, and to survey, demarcate, and make a map of the same;

(*c*) power to cut and thresh the crops on any land, in respect of which the order under the said section 101 has been made, and to weigh the produce with a view to estimating the capabilities of the soil; and

(*d*) power to take down evidence with his own hand in the English language, in proceedings held under Chapter X. of the Act in which an appeal is allowed in accordance with the procedure laid down in the Code of Civil Procedure for the trial of suits.

42. A Revenue-officer appointed with the additional designation of "Assistant Settlement Officer" is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

Further powers vested in Assistant Settlement Officer.

Ben. Act V. of 1875.

43. A Revenue-officer appointed with the additional designation of "Settlement Officer" is also hereby vested with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

Further powers vested in Settlement Officer.

44. A Revenue-officer appointed with the additional designation of "Settlement Officer" or "Assistant Settlement Officer" is also hereby vested with all the powers exercisable by a Civil Court in the trial of suits.

Further powers vested in Settlement and Assistant Settlement Officers.

45. A Revenue-officer appointed with the additional designation of "Settlement-Officer" may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him—

Powers of Settlement Officer to make over certain matters to Assistant Settlement Officer.

(*a*) objections under section 103 A;

(*b*) the settlement of fair rents, including the preparation of a table of rates;

(*c*) the preparation of a settlement-rent roll under Chapter X., Part II. of the Act;

(*d*) objections under section 104B (*3*) or section 104 E;

(*e*) applications for settlement of fair rents under section 105;

(*f*) suits instituted for the trial of disputes under section 106; and

(*g*) applications for the commutation of rents under section 40.

46. A Revenue-officer appointed under the designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in rule 45, and may dispose of them himself, or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He may also transfer to a competent Civil Court for trial any particular case or class of cases under section 106 of the Act.

Power of Settlement Officer to withdraw and transfer cases.

47. Where no special Settlement Officer has been appointed for any district, the Collector of that district or, in the case of Howrah, the Covenanted Deputy Collector is hereby appointed to discharge all the functions of a Revenue-officer under Chapter X. of the Act, and is vested with all the powers of a Settlement Officer under rules 41 to 46.

Collector of district to discharge functions of Settlement Officer where no such officer appointed.

48. In respect of all operations under Chapter X. of the Act which have been placed under the administrative control of the Director of Land Records, that officer is hereby appointed to discharge all the functions of a Revenue-officer under the said Chapter and is vested with all the powers of a Settlement Officer under rules 41 to 46. In respect of such operations, he is further declared, under section 104B (*4*), to be the "confirming authority" for tables of rates and settlement rent-rolls which have been prepared by other Revenue-officers, and he is declared, under section 104G (*1*), to be the superior Revenue authority to whom appeals will lie from original orders on objections passed by other Revenue-officers under section 104B (*3*) or section 104E. In the case of tables of rates and settlement rent-rolls prepared by the Director of Land Records, the Board of Revenue will be the "confirming authority," and in the case of original orders on objections passsed by the Director of Land Records, the Board of Revenue will be the appellate authority.

Powers vested in Director of Land Records.

PART II.

Procedure in the preparation of a record-of-rights.

49. (*1*) Application under section 101 (*2*) (*a*) and under section 103 of the Act shall be made to the Collector, who shall forward them with his recommendations through the Director of Land Records to the Commissioner.

Applications under sections 101 (*2*) (*a*) and 103.

(*2*) Every application under section 101 (*2*) (*a*) shall specify—

(*a*) whether the applicant is a landlord or tenant;

(*b*) the local area, estate tenure or part thereof for which the application is made;

(*c*) the interest of the applicant in the lands of the local area, estate, tenure or part thereof.

(*3*) Every application under section 103 shall specify—

(*a*) the status of the applicant, viz., whether he is a proprietor or a tenure-holder or a *raiyat*;

(*b*) the particulars specified in section 103 of the Act, in respect of which the application is made; and

(*c*) the number of tenants occupying the estate or tenure or part thereof, in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant) is able to give these particulars).

(*4*) If the application under section 101 (*2*) (*a*) or under section 103 of the Act, is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under the Land Registration Act, 1876.*

(*5*) If the application under section 103 is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

(*6*) The Commissioner shall forward an application under section 101 (*2*) (*a*) with his recommendation to the Local Government for orders.

(*7*) The Commissioner may allow an application under section 103, or, if he considers that it cannot be granted with advantage to the interests of all persons concerned, he may reject it, recording his reasons for doing so.

(*8*) When an application under section 101 (*2*) (*a*) or section 103 of the Act is allowed, the Collector shall call upon the applicant to deposit one rupee per acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed.

(*9*) If the amount so deposited proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination. If the amount deposited proves insufficient to cover such cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.

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* Ben. Act VII. of 1876.

Procedure for making survey and preparing record-of-rights.

50. (*1*) When an order has been made under section 101 (*1*) or section 101 (*2*) of the Act directing that a survey shall be made and a record-of-rights prepared by a Revenue-officer in respect of the lands of any local area, estate or tenure or part thereof, the survey shall be made and the record-of-rights prepared in the manner described in the following rules (in this Part and in Part III of this Chapter) and by the following processes, namely :—

(*i*) Traverse survey.

(*ii*) Cadastral survey.

(*iii*) Erection of boundary marks.

(*iv*) Preliminary record-writing (or *khanapuri*).

(*v*) Local explanation (or *Bujharat*).

(*vi*) Attestation.

(*vii*) Publication of the draft record.

(*viii*) Disposal of objections under section 103A.

(*ix*) Preparation of the settlement rent-roll, in cases in which a settlement of revenue is being or is about to be made.

(*x*) Preparation of the final record.

(*xi*) Publication of the final record.

(*xii*) Distribution of the final record and of printed maps; and recovery of costs where ordered under section 114.

(*xiii*) Settlement of fair rents under sections 105 and 105A.

(*xiv*) Trial of suits under section 106.

Provided that stage (*v*),—local explanation,—may be omitted with the approval of the Director of Land Records.

(*2*) A Revenue-officer who has been appointed with the additional designation of "Settlement Officer" may, at any time before the publication of the final record, direct that any portion of the proceedings in respect of the lands of any local area, estate or tenure or part thereof, shall be cancelled and that the proceedings shall be carried out *de novo* from such stage as he may direct.

(3) When an order has been made under section 103 directing that all or any of the particulars specified in section 102 shall be ascertained and recorded with respect to any estate or tenure or part thereof, the Revenue-officer shall proceed in accordance with the following rules (in this Part and in Part III of this Chapter), so far as they may be applicable.

51. *Traverse Survey.*—The cadastral survey of the notified area shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

52. *Cadastral Survey.*—(1) In the course of proceedings under section 101 of the Act, a large-scale map showing roads, rivers, railways and and other physical features of the country, as well as homesteads and other fields, shall be prepared for each village contemplated by section 115A of the Act as the unit of survey and record.

(2) When the area contained within the external boundaries of the village maps of the previous survey contemplated by section 115A is unsuitable as the unit of survey and record, or if there has been no such previous survey, the Settlement-officer shall, after ascertaining, as far as possible, the opinions of the landlords and tenants concerned, submit his proposals for the determination of the area to be adopted as the unit of record and survey to the Board of Revenue through the controlling officers to whom he is subordinate. That unit shall, if sanctioned by the Board of Revenue, be adopted in framing the record-of-rights, but shall not be deemed to constitute a village within the meaning of the Act until a notification has been issued under section 3 (10) (*b*). The Board of Revenue shall submit a copy of its order in each case to the Local Government for the issue of the notification.

53. *Erection of Boundary Marks.*—Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue-officer for the definition of any boundary.

54. *Preliminary Record-writing.*—At this and the two following stages the draft record shall be prepared. The draft record shall con-

sist of statements of rights which are hereinafter styled the *khatians*. There shall ordinarily be a separate *khatian* for each person interested, or each group of persons jointly interested, in the land, whether as proprietor, tenure-holder, raiyat, under-raiyat or occupant, and each *khatian* shall show the rights and liabilities of each person or group of persons according to the particulars which have been specified in the notification under section 101. At this stage all such particulars shall find entry, with the exception that no entry shall be made as to the revenue, rent or cess, the class to which the tenant belongs, or the special conditions and incidents of the tenancy. At this stage there shall also be prepared a field-index or *khasra* arranged according to the serial numbers of the fields in the village. This field-index shall not form part of the draft record. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by a Revenue-officer or a kanungo in a summary manner and on the basis of actual possession.

55. *Local Explanation.*—When the areas of the fields have been extracted and entered in the preliminary record, a copy of each *khatian* shall be made over by a Revenue-officer or a kanungo to the person or body of joint persons in whose names the *khatian* has been opened, or to their representatives. Each *khatian* shall then be examined on the ground, with reference to the village map, by a Revenue-officer or a kanungo, and shall be explained to the person or persons concerned, or their representatives, if present. The Revenue-officer or kanungo shall make such corrections as are necessary in the map, in the draft record and in the copies of the *khatians* which have been distributed, if they can be produced for this purpose. At this stage entries of the rent which is payable according to the statement of the landlord and according to the statement of the tenant shall be made in the draft *khatians* of the tenants and in such copies as are produced; but the other particulars which were omitted at the stage of preliminary record-writing shall be deferred until the stage of attestation.

56. *Attestation.*—This stage of the operations shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the *khatians*. The attestation of each village shall be taken up at a convenient place in or near the village. Before attestation begins, a proclamation shall be published in the village giving due notice to the

landlords and tenants and calling on them to appear before the Revenue-officer on the date fixed, bringing with them their copies of the *khatians*. As each person appears before him the Revenue-officer shall examine his *khatian*, read out all the important entries, make corrections where required, and see that the *khatian* is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue-officer in a summary manner and on the basis of actual possession. In the *khatian* of each proprietor or group of proprietors he shall enter with his own hand the revenue payable to Government. In the *khatian* of each tenant or group of tenants he shall enter with his own hand the class to which the tenant or group of tenants belongs, the special conditions and incidents (if any) of the tenancy and the rent lawfully payable or deliverable to each landlord or group of landlords. In the *khatian* of each cultivating *raiyat* as defined in the Cess Act,* the Revenue-officer shall, and in the *khatian* of each tenure-holder as defined therein, the Revenue-officer shall, as far as possible, record the cess lawfully payable to each landlord or group of landlords. The Revenue-officer shall then sign and date the office copy of the *khatian*, and if the copy of the *khatian*, which was given to the person or persons concerned, is produced, the Revenue-officer shall see that it corresponds with the office copy as attested. When the Revenue-officer has completed the attestation of all the *khatians* of a village, he shall draw up a formal proceeding to this effect.

57. *Publication of the Draft Record.*—The Revenue-officer shall publish the draft record-of-rights by placing it for public inspection, free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the draft record of that village will be open to public inspection, the period during which it will be open to such inspection, and the last date on which objections may be filed. Notwithstanding anything contained in the proclamation, the Revenue-officer may extend the period during which the draft record will be open to inspection and during which objections may be filed.

58. *Objections under section 103A.*—(*1*) Blank forms of objection shall be supplied free of charge and objections shall, as far as practicable,

* Ben. Act IX. of 1880.

be made on such forms. Along with the original objection, the objector shall file a copy or copies for service on all other persons who, in the opinion of the Revenue-officer, are materially interested in the case. The Revenue-officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and with each notice to a person other than the objector he shall forward a copy of the objection. Objections regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue-officer on the basis of actual possession. The record shall contain the names of the witnesses examined and an abstract of the reasons for the decision. When a Revenue-officer directs that a change shall be made in the rent recorded as payable by any tenant he shall direct that a corresponding change shall be made in the cess, if any, recorded as payable by such tenant. Objections shall not be disposed of in the absence of any of the parties materially interested, or their representatives, unless the Revenue-officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

(*z*) Whenever the Revenue-officer has been unable, before the publication of the draft record, to enter the cess payable by all or any of the tenure-holders in any local area, and whenever, owing to a revaluation duly made after the publication of the draft record, there have been changes in the cess lawfully payable by all or any of the tenure-holders in such local area, the Collector may, at any time before the final publication of the record, make an objection to the omissions or entries in question, and the Revenue-officer shall thereupon proceed, notwithstanding anything contained in sub-rule (*t*) of this rule, to consider the objection, and, if necessary, to make in the draft record of such local area entries or revised entries of the cess which is then lawfully payable by each tenure-holder concerned :

Provided that no such entry or revised entry shall be made unless the tenure-holder has been previously informed of the proposed entry and has been given an opportunity of objecting thereto.

59. *Preparation of a settlement rent-roll.*—Where land revenue is being, or is about to be, settled, the Revenue-officer shall prepare a rent-roll for each village, in accordance with the following procedure :—

(*i*) Before preparing the rent-roll the Revenue-officer shall issue a proclamation informing the landlords and tenants of the time and place at which the preparation of the rent-roll will begin. If any tenant be absent, the Revenue-officer shall make no entry in the rent-roll which would have the effect of altering the rent of that tenant until a special notice has been duly served on that tenant.

(*ii*) When the Revenue-officer is preparing the settlement rent-roll on the basis of a table of rates, he shall consult the landlord and tenants of the village regarding their own classification of the lands therein and regarding the relative capability of each class of land, according to that classification. When specifying in the table of rates the rate of rent which is fairly and equitably payable in respect of each class of land, the Revenue-officer shall specify and have regard to the rate of rent which is now being paid in respect of each class of land, and shall also have regard to the statements of the landlords and tenants as to the classification and relative capability of lands. Before settling any rent upon the application of the table of rates, the Revenue-officer shall consider the circumstances of the tenant and shall compare the total rent which he is now paying with the rent which he would pay according to the table of rates. He shall also consider whether the land held by the tenant is good or bad land of its class.

(*iii*) When determining the final entries to be made in the rent-roll, the Revenue-officer shall read out, or cause to be read out in his presence, the principal entries relating to the holding and rent of each tenant whose rent is to be settled, and shall enter in the rent-roll with his own hand the fair rent settled for each such tenant.

(*iv*) The Revenue-officer shall enter in the settlement rent-roll the cess which is payable by each tenant to his landlord after the determination of the fair rent.

(*v*) The publication of the draft table of rates, if any, and of the draft settlement rent-roll shall be carried out in the manner

and for the period prescribed in the case of the publication of the draft record-of-rights.

(*vi*) Objections under section 104B (*3*) or under section 104E of the Act shall ordinarily be disposed of by the Revenue-officer, in or near the village in which the land is situated. The Revenue-officer shall record his reasons for each order on an objection. Appeals will lie against these orders to the superior Revenue authority mentioned in rule 48.

60. *Preparation of the Final Record.*— When all objections under section 103A of the Act have been disposed of, and when the settlement rent-roll, if any, has been prepared, sanctioned and incorporated with the record, and when the draft record has been corrected in accordance with the original and appellate orders on all objections, the Revenue-officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of *khatians* prepared on forms which are generally similar to the forms used for the *khatians* of the draft record. The *khasra* shall not form part of the final record. The final record shall be printed or prepared in manuscript, according as the Local Government may, by general or special order, determine.

61. *Publication of the Final Record.*—The Revenue-officer shall publish the final record-of-rights by placing it for public inspection free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

62. *Distribution of printed maps and of copies of the Final Record.*—The maps which have been prepared under rule 52 (*1*) may be printed under the authority of the Local Government, and may be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. Copies of the final record-of-rights, or of portions thereof, shall be printed or prepared in manuscript and shall, after certification under section 76 of the Indian Evidence Act,*

* Act I. of 1872.

be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may, from time to time, by general or special order, direct. The printed maps and the copies of the record or of portions thereof, which are distributed under this rule to persons other than public officers shall be distributed free or on payment, according as, in the case of each local area, the Local Government may direct. When payment is required the sums so received shall ordinarily be adjusted against the expenses incurred on account of survey and settlement, should the account of those expenses still be open.

PART III.

PROCEDURE AFTER FINAL PUBLICATION.

Settlement of fair rents under Sections 105 and 105A.

63. (*1*) When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in this rule, the Revenue-officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure for the trial of suits.

(*2*) When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being or is not about to be made, the procedure laid down in this rule for recording and settling rents shall be followed, the manager of the estate or the tenure being regarded as the landlord.

(*3*) When a landlord or tenant applies for the settlement of fair rent notice shall be served on every person interested in the application, together with a copy of the application, or extract thereform, or summary thereof, so far as the application concerns such persons.

(*4*) With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord in the same village may make a joint application for the settlement of rent, or may be joined as defendants in the same proceedings on a similar application by the landlord:

Provided that, if at any time it appears to the Revenue-officer that the question between any two of the parties, of whom one is so joined

with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application, as he may think fit.

(5) On the date fixed for the settlement of fair rents or any subsequent date to which the proceedings may be adjourned, the Revenue-officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105 of the Act.

(6) When a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.

(7) Where a landlord or a tenant appears and the fair rent is not settled under sub-section (5) or sub-section (6) of section 105 of the Act, that is, by the acceptance by the parties of a rent proposed by the Revenue-officer, or by compromise, the Revenue-officer shall record evidence in the manner prescribed in clause (*f*) of section 148 of the Act for the trial of rent suits, and shall settle a fair and equitable rent according to law:

Provided that in important cases the Revenue-offier may in his discretion, record evidence at length.

(8) When a fair rent has been settled under these rules, it shall be entered in the *khatian* as the rent payable in respect of the tenancy from the date prescribed by section 110 of the Act.

(9) It shall not be necessary for a Revenue-officer to draw up a separate decree with regard to the fair rent settled; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

(10) A proceeding under section 105A of the Act shall be considered as part of the proceeding under section 105 in which the issue arose, and the record of a proceeding under section 105A shall be considered as part of the record of the proceeding under section 105. In trying and deciding issues under section 105A, the Revenue-officer shall record evidence in the manner prescribed in sub-rule (7) of this rule.

64. *Suits under section 106.*—Proceedings under section 106 of the Act shall be dealt with in all respects as suits between the parties.

Rules under order XXVI, rule 9, of the Civil Procedure Code, not to apply to proceedings under section 105, 105A or 106 of the Bengal Tenancy Act.

65. The rules issued by the Local Government under Order XXVI, rule 9, of the Civil procedure Code, 1908 shall not apply to proceedings in the Court of a Revenue-officer under section 105, 105A or 106 of the Act.

Applications under section 108A by whom to be dealt with.

66. Applications under section 108A of the Act for the correction of *bonâ-fide* mistakes must be dealt with by a Revenue-officer specially empowered by the Local Government. If they are presented to a Revenue-officer not specially empowered under that section, he shall receive them and forward them with his report to the Revenue-officer so empowered. The Court-fee payable on every such application is eight annas.

CHAPTER VII.

General Scale of Fees.

Fees for sevice of notice.

67. *Service of Notices.*—(1) For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court-fees Act, 1870 (VII. of 1870)], and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

(2) Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

(3) In addition to the above fee, the actual charge which must be incurred if it is necessary to travel by railway or boat, or to cross ferries shall be levied from, and paid by, the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway fare, boat-hire, etc., the sum leviable shall be charged in equal shares upon all the processes so carried. The rate at which such boat-hire is to be charged shall be

the same as those fixed for criminal processes under rule VII of the Rules prescribed by the High Court under clause (*ii*) of section 20 of Act VII. of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of this nature.

(*4*) If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

Fees for deposits of rent.

68. *Deposits of rent.*—For deposits of rent under section 61 (*2*) of the Act fees shall be levied according to the following scale:—

	Rs.		A.
On any sum not exceeding	5		1
On any sum exceeding but not exceeding	5 / 10	...	2
On any sum exceeding but not exceeding	10 / 25	...	4

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder; provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only two annas; provided also that in no case shall the fee exceed the sum of Rs. 5.

Fees for processes for distraint.

69. *Distraint of crops.*—(*1*) The following scale of charges is prescribed on account of processes for distraint and sale under section 134 of the Act:—

(*a*) in respect of the warrant of distraint—8 annas;

(*b*) in respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—8 annas a day; and

(*c*) in respect of action taken under sub-rule (*2*) of section 126 of the Act, for the reaping, storing or preservation of the crop distrained—8 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

(*2*) In addition to the charges under clauses (*a*), (*b*) and (*c*) of sub-rule (*1*), railway fare, boat-hire and ferry charges may be levied, when necessary, as under rule 67.

FORM 1.

APPLICATION UNDER SECTION 80 OF ACT VIII OF 1885.

(*See Rules 12 and 13.*)

To

THE COLLECTOR OF

THE application of , son , resident of for registration of an improvement under section 80 of the Bengal Tenancy Act, 1885, (VIII of 1885).

Name of pargana and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land improved.	Nature of improvement.	By whom executed and at whose expense.	Cost of improvement.	When executed.	Names of all tenants benefited in each village.	To what extent each tenant has been benefited.
1	2	3	4	5	6	7	8	9
					Rs. A. P.			

A. B.,
Landlord.

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section $\frac{12}{18}$ of Act VIII. of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; chalan appended.

C. D.,

Registering Officer.

To

A. B., RESIDENT OF

TAKE notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government:—

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati-holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or raiyati-holding at xed rates.	Name, father's name, and residence of transferee of tenure or raiyati-holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								RS. A. P.	

C. D.,

Registering Officer.

ORDERED that this notice be served on the abovenamed landlord.

E. F.,
Collector.

[REVERSE OF THE FORM.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Name of person on whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				RS. A. P.

FORM 3.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of as required by section $\frac{12}{18}$ of Act VIII. of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee of Rs. and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment, have been paid into the Treasury; chalan appended.

C. D.,
Registering Officer.

To

A. B., ETC., RESIDENTS OF

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [or raiyati holding at fixed rates (as the case may be)] as specified below, of which you are stated to be a joint-landlord has been registered, and that the landlord's fee of Rs. will be held in deposit in

the Collector's office till applied for by you and your co-sharers or some person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government :—

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati-holding at fixed rates.	Name, father's name, and residence of transferrer of tenure or raiyati-holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati-holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,
Registering Officer.

Ordered that this notice be served on the abovenamed landlords.

E. F.,
Collector.

[Reverse of the Form.]

Serial No. of chalan.	No. of notice.	Name of depositor.	Names of persons on whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				Rs. A. P.

FORM 4.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or common manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of as required by section $\frac{13}{18}$ of Act of VIII. of 1885. The landlord's fee of Rs. , money order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury; chalan appended.

C. D.,
Judge.

To

A. B., RESIDENT OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenancy which is alleged to be a tenure (or raiyati-holding at fixed rates) specified below, of which you are alleged to be the landlord, has been confirmed (or made) and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not

claimed by you within three years from the date of service of this notice, it will be forfeited to the Government :—

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates transferred, with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure or rayati-holding at fixed rates has been sold or foreclosed.	Name, father's name and residence of purchaser of tenure or raiyati-holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	Remarks.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the abovenamed landlord.

E. F.,
Collector.

FORM 5.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of as required by section $\frac{13}{18}$ of Act VIII. of 1885. A copy for each joint-landlord is herewith forwarded. The landlord's fee of Rs. and Rs. for serving the notice by post in a registered cover

and obtaining an acknowledgment have been paid into the Treasury; chalan appended.

C. D.,
Judge.

To

A. B. ETC., RESIDENTS OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenure (or raiyati-holding at fixed rates) specified below, of which you are alleged to be a joint landlord, has been confirmed or made and the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers, or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers, or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government:—

Tauzi No. estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates transferred with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure or raiyati-holding at fixed rates has been sold or foreclosed.	Name, father's name and residence of purchaser of tenure or raiyati-holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the abovenamed landlords.

E. F.,
Collector.

FORM 6

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is a single landlord or common agent or manager.*)

TO THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., resident of . The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

C. D.,

Tenure-holder or raiyat holding at fixed rates.

TO A. B., RESIDENT OF

TAKE notice that I have succeeded to the tenure [or raiyati-holding at fixed rates (as the case may be)] specified below, of which you are the landlord and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government:—

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure of raiyati-holding at fixed rates.	Name, father's name, and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known, of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name, and residence of successor to tenure or raiyati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs. A. P.					Rs. A. P.	

C. D.,—*Resident of*

ORDERED that this notice be served on the abovenamed A. B.;

E. F.,—*Collector.*

FORM 7.

NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII. OF 1885.

(*See Rule 24.*)

(*Where there is more than one landlord and no common agent or manager.*)

To THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B, etc., residents of . A copy for each joint-landlord is herewith submitted. The landlord's fee of Rs. , and Rs. , for serving the notice by post in a registered cover and obtaining an acknowledgment, are deposited herewith.

C. D.,—*Tenure-holder or raiyat holding at fixed rates.*

To A. B., ETC., RESIDENTS OF

TAKE notice that I have succeeded to the tenure [or raiyati-holding at fixed rates (as the case may be)] specified below, of which you are a joint-landlord. The landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you and your co-sharers or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government :—

Tauzi No. of estate.	Name of estate.	Description of tenure or raiyati-holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or raiyati-holding at fixed rates.	Name, father's name, and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known, of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name and residence of successor to tenure or raiyati-holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs. A. P.					Rs. A. P.	

C. D.,—*Resident of*

ORDERED that this notice be served on the abovenamed A. B.

E. F.,—*Collector.*

FORM 8.

NOTIFICATION UNDER SECTION 87 OF ACT VIII. OF 1885.

(*See Rule 37.*)

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D' resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned, and that I am about to re-enter upon it accordingly.

Dated } *Landlord.*

Schedule of Property.

Name of village and pargana in which situated.	Area and boundaries of holding.	Rent of holding.
1	2	3

FORM 9.

REQUISITION TO COLLECTOR FOR A VERIFIED OR CERTIFIED COPY OF, OR EXTRACTS FROM, THE RECORD-OF-RIGHTS UNDER SECTION 148 (*b* 1) OF THE BENGAL TENANCY ACT, 1885.

(*See Rule 40.*)

BE pleased to furnish to this Court on or before the

a certified copy of, or extract from the record-of-rights relating to the undermentioned tenancy, which is required for reference in suit No. of

A. B.,
Judge.

Name of village.	Thana.	Thana No.	Tauzi No. and, if revenue-free, Register No.	Name of land-lord at the date of publication of the record-of-rights.	Name of tenant at the date of publication of the record-of-rights.	Number of khatian or reference to other document forming part of the record-of-rights, of which copy or extract is required.	REMARKS.
1	2	3	4	5	6	7	8

The copy required is sent herewith.

C. D.,
Collectorate Record-keeper or other officer authorised to certify.

COPY received.
E. F.,
Sheristadar, Civil Court.

Bihar and Orissa Gazette.

Dated the 27th March 1913.

Notification.

No. 2674-R.—In exercise of the powers conferred by section 189(*1*) of the Bengal Tenancy Act, 1885, (Bengal Act VIII. of 1885). the Lieutenant-Governor in Council is pleased to direct that for rule 48 a) of the Rules published under the Bengal Government Notification No. 2705 T.R., dated the 31st October 1907, as amended by Notification No. 2079 L.R., dated the 7th April 1908, the following rule shall be substituted, namely :—

"48(*a*). The *khewat* shall show the character and extent of proprietary interests. During the *khanapuri* stage it shall be written up in accordance with the facts as then ascertained, but as mistakes and changes of any kind are brought to light at the later stages of the Settlement, the Settlement Officer shall obtain extracts from the registers maintained by the Collector under the provisions of the Land Registration Act, 1876 (Bengal Act VII. of 1876 . He shall have these extracts before him when writing the *khewat* and shall make enquiries regarding any discrepancies that appear to exist between the entries in the Collector's Land Registers and the facts as ascertained by him. Differences between the entries in the *khewats* and the entries in the hand Registers shall be reported to the Collector."

Notification, dated the 16th April 1915.

No. $\frac{2637}{11T-14}$ R—In exercise of the powers conferred by section 189(*1*) of the Bengal Tenancy Act, 1885 (VIII. of 1885), the Lieutenant-Governor in Council is pleased to direct that for rule 43 of the Rules published under the Bengal Government Notification No. 2705 T.R., dated the 31st October 1907, as amended by Notification No. 2079 L.R., dated the 7th April 1908, and Notification No. 8193 R, dated the 4th November 1914, the following rule shall be substituted namely :—

Demarcation of village boundaries and determination of the unit of survey and record-of-rights.

43 (*a*). In the demarcation of village boundaries, the area contained within the exterior boundaries of the village maps of the Revenue Survey shall be preserved, as far as possible as the unit of survey and record except in cases where the Board of Revenue under section 115A, has sanctioned the adoption of some other suit.

(*b*) Where there is no dispute, the boundary of the village according to possession shall be followed for the purposes of map and record. But where a revision survey is being made and the previous cadastral boundary has been sanctioned under section 115A, for adoption as the unit of survey, such boundary shall ordinarily be followed without regard to possession.

(*c*) Where there is a dispute as to a village boundary, the Revenue Officer shall decide the dispute under the Bengal Survey Act, 1875 (Bengal Act V. of 1875.)

Provided that where the survey is a revision survey based on cadastral boundaries adopted under section 115A., by sanction of the Board the Settlement Officer may relay that boundary under section 45; Act V. (B.C.) of 1875 instead of determining it under section 41 and may, either on application or of his own motion, after giving notice to the parties concerned to appear and be heard in the matter, correct any *bonâ-fide* mistake in the demarcation made in the previous survey.

(*d*) Where the Settlement Officer is of opinion that the village maps prepared at the Revenue Survey or such other survey as has been sanctioned under section 115A., by the Board for adoption are not suitable as the unit of survey and record, he shall issue notice in the manner prescribed, and after such local inquiry in the presence of the parties as he may consider necessary, shall determine the area to be included in the village. He shall then submit his proceedings to the Board through such superior authorities as the Board may prescribe; and such as the Board may, after such further enquiry as may be deemed necessary, declare to be included in a village shall be adopted as the unit of survey and record-of-rights.

Provided that in all such cases the Settlement Officer shall draw up a statement in such form as the Board may prescribe showing the areas adopted as the unit of survey as compared with the areas contained in the village maps of the Revenue Survey or other survey adopted under section 115 A., and such statement shall be filed in the Collector's office.

(*f*) In cases where the procedure prescribed in sub-clause (*d*) and (*e*) have been adopted, the Board of Revenue shall submit a report to Government for issue of the notification prescribed by section 3 (*10*) (*b*) of the Bengal Tenancy Act.

(*g*) The notice under rule 43 (*d*) and (*e*) of the enquiry to be held shall be given by proclamation and beat of drum and by posting it, in the presence of not less than two persons in some convenient place or places in the lands to which it refers.